

**PRELIMINARY WETLAND DELINEATION
AND JURISDICTIONAL DETERMINATION
FOR
THE RESORT AT TAOS SKI VALLEY, LLC.
TAOS SKI VALLEY WETLAND ASSESSMENT PROJECT
TAOS COUNTY, NEW MEXICO**



Prepared for
**The Resort At Taos Ski Valley, LLC.
2 Park Plaza, Suite 700
Irvine, CA 92614**

Prepared by
**Souder, Miller & Associates
112 West Montezuma Avenue, Suite 3
Cortez, Colorado 81321**



July 5, 2018

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1.0 EXECUTIVE SUMMARY

The Resort at Taos Ski Valley, LLC. (RTSV) is proposing to construct several lodging developments. The project area is situated on privately owned land at the base area of Taos Ski Valley approximately 18 miles from the Town of Taos, within Taos County, New Mexico. The project area is depicted on the Wheeler Peak, New Mexico, U.S. Geological Survey (USGS) 7.5' topographic quadrangle map, and its legal description is summarized as follows: Block 4, Block 2, Lots #1 & #2 in Kachina Village Subdivision, occurring within the Antoine Leroux Grant, Sections 10 & 15, Township 27 North, Range 14 East, N.M.P.M. (Figures 1 & 2).

Under the Clean Water Act (CWA), properly known as the Federal Pollution Control Act, Section 404 and Section 10 of the Rivers and Harbors Act of 1899 (33 Code of Federal Regulations (CFR) Parts 320-330), the Environmental Protection Agency, and the U.S. Army Corps of Engineers (USACE) share regulatory authority over Waters of the U.S. (WoUS). Souder, Miller & Associates (SMA) was retained by SRI to conduct a wetland delineation across the project area and assess the property for jurisdictional aquatic resources.

The project area was surveyed for plant speciation, soils, and hydrology as per the USACE Wetland Delineation Manual (1987) and the Interim Regional Supplement: Arid West Region (2007). Garmin GPS equipment was used to define the perimeter of areas containing hydrophytic vegetation, hydric soils, wetland hydrology, and/or features characteristic of WoUS.

Several areas of jurisdictional wetlands were mapped in the project area. Two (2) riparian wetland areas were mapped that are associated with the named North Gunsight Spring and South Gunsight Spring. These long sinuous riparian corridors exhibit flowing surface waters that are supplied by the springs. In addition, one (1) large wetland area displays marsh habitat yet was mostly dry during this exceptional drought year. One (1) small seep wetland area was mapped. Two (2) mountain-side seeps were also mapped due to visible surface water and saturated soils. A total of approximately 2,993 acres of jurisdictional aquatic resources were mapped throughout the project area. The included delineation map is preliminary until written approval from the USACE (Appendix A).

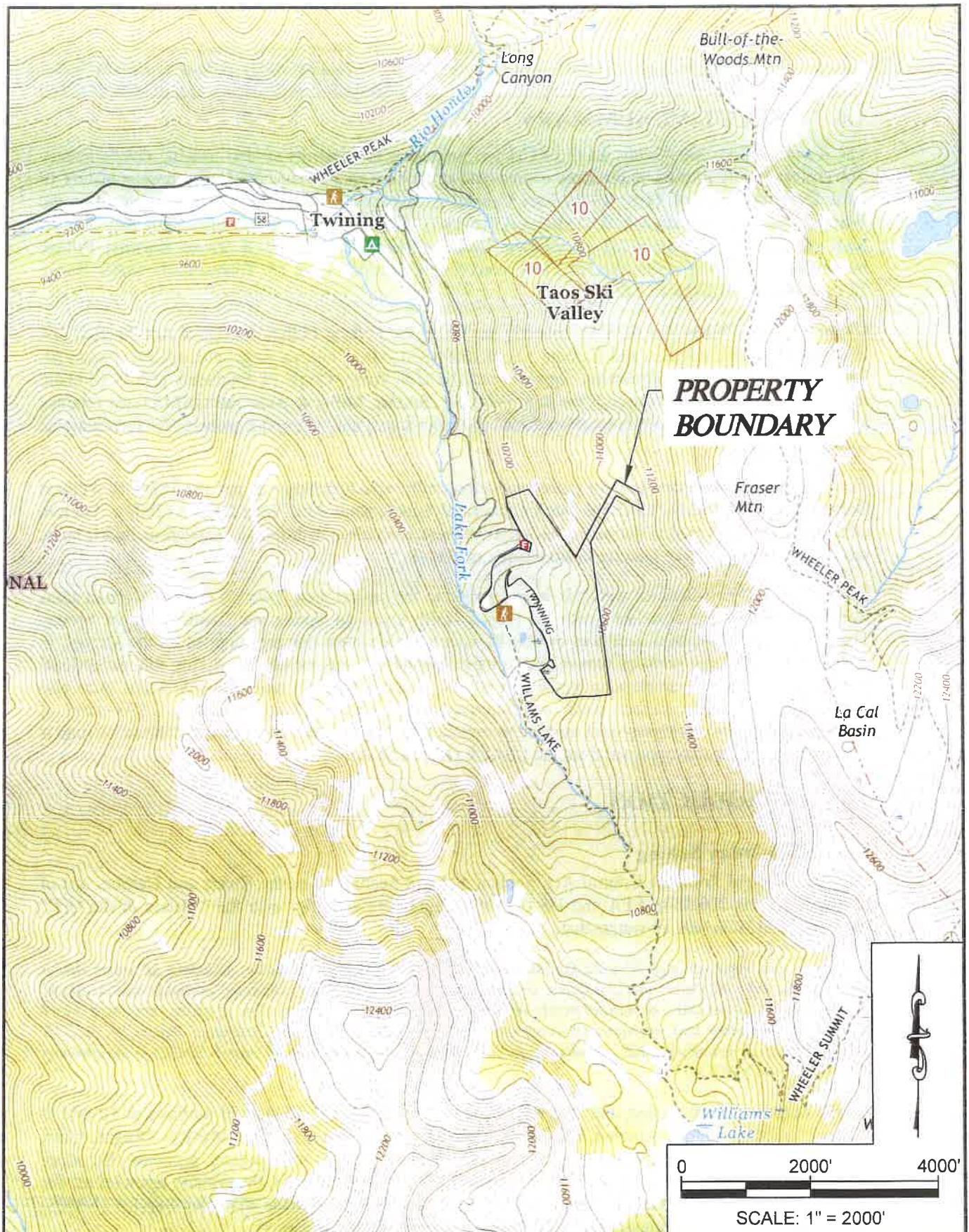
2.0 INTRODUCTION


2.1 Regulatory Setting

Under the Federal Pollution Control Act, Section 404 and Section 10 of the Rivers and Harbors Act of 1899 (CFR Parts 320-330), EPA and USACE have regulatory authority over the "Waters of the U.S." (WoUS). WoUS include all waters that:

"...are, have, or may be used for interstate and/or international commerce, including all water that is subject to the tide; all waters that are rivers, streams, sloughs, lakes, mudflats, sandflats, wetlands, wet meadows, prairie potholes, playa lakes, or natural ponds and the use, degradation, or destruction, of above mentioned, which could affect interstate and international commerce; all impoundment of above mentioned Waters of the U.S. (WoUS). In areas where wetlands are absent, the jurisdictional boundary for the Corps (USACE) is the ordinary high water mark (OHWM)."

For the purposes of this report, the "Southwest" is broadly defined to include all portions of 10 arid to semi-arid western states: (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, Texas, and Wyoming). The USACE is required to consult with other federal agencies that share responsibility for the natural resource. With regards to WoUS and wetlands, the primary agencies are the United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) regarding any concerns of impacts to federally protected species of concern.



<p>SOUDER, MILLER & ASSOCIATES  112 W. Montezuma Avenue, Suite 3 Cortez, CO 81321 Phone (970) 565-4465 Toll-Free (888) 565-4465 Fax (970) 565-4776 Serving the Southwest & Rocky Mountains www.soudermiller.com</p>	<p>SHOPOFF REALTY TAOS, NM VICINITY MAP TAOS SKI VALLEY</p>	<table border="1"> <tr> <td>Designed CP</td> <td>Drawn DJB</td> <td>Checked RSA</td> </tr> <tr> <td colspan="3">Date June 2018</td> </tr> <tr> <td colspan="3">Scale: Horiz 1" = 2000'</td> </tr> <tr> <td colspan="3">Vert N/A</td> </tr> <tr> <td colspan="3">Project No. 1527099</td> </tr> </table>	Designed CP	Drawn DJB	Checked RSA	Date June 2018			Scale: Horiz 1" = 2000'			Vert N/A			Project No. 1527099		
Designed CP	Drawn DJB	Checked RSA															
Date June 2018																	
Scale: Horiz 1" = 2000'																	
Vert N/A																	
Project No. 1527099																	



**PROPERTY
BOUNDARY**



SCALE: 1" = 600'



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SHOPOFF REALTY		TAOS, NM	
Designed CP	Drawn DJB	Checked RSA	
Date: June 2018			
Scale Horiz: 1" = 600'		Vert: N/A	
Project No: 1527099			

**SITE MAP
TAOS SKI VALLEY**

APT-12 Figure 2

2.2 Site Description

The project study area is approximately 74.1 acres of private land situated on the east side of Kachina Road adjacent to the Taos Ski Valley Ski Area. The surface elevation of the property is approximately 10,300 - 10,480 feet above mean sea level (amsl). The project area is situated on the western flank of Frazer Mountain on the east side of the Lake Fork Valley. The project area is mostly steep mountain side terrain with the majority of the acreage containing slopes greater than 20 percent. Two avalanche paths descend from the upper mountain terrain and become entrained into steep sided riparian corridors. Two springs are located on the parcel and are described as the North Gunsight Spring and South Gunsight Spring. Each of these springs possess more than one emergence point.

2.3 Site Location

The project area is located approximately 18 miles northeast of the Town of Taos. The site is located in Taos County on privately owned land. The project area may be found on the Wheeler Peak, New Mexico, U.S. Geological Survey (USGS) 7.5' topographic quadrangle map, and its' legal description is summarized as follows: Block 4, Block 2, Lots #1 & #2 in Kachina Village Subdivision, occurring within the Antoine Leroux Grant, Sections 10 & 15, Township 27 North, Range 14 East, N.M.P.M (Figures 1 & 2).

2.4 Contact Information

Wetland Consultant

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Project Proponent

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3.0 Purpose of Assessment and Jurisdictional Criteria

The jurisdictional boundary for the USACE is the Ordinary High Water Mark (OHWM) defined in 33 CFR Part 328.3. The concept of OHWM was originally employed to delineate the extent of tidal and navigable waters. In stream channels, including those in arid regions, the OHWM boundary is determined by examining recent physical evidence of surface flow. The definition of OHWM is based on physical evidence and lacks any statements concerning the duration and frequency of events.

It should be noted that while the *USACE Jurisdictional Determination Form Instructional Guidebook* provides guidance and standards for the determination of WoUS, interpretation of field condition is not always simple. It is the purview of the regulatory agency to accept or amend delineations submitted to them. Therefore, this delineation should be considered preliminary until approved in writing by the USACE.

4.0 Delineation Methodology

The determination work was completed by Mr. Curtis Pattillo on June 18-20, 2018. The delineation work was conducted in accordance with the USACE Wetland Delineation Manual (1987) and the Arid West

Supplement (January 2007). The wetland delineation effort consisted of the Routine, Small Area Determination Method. Visual observations were used to identify vegetation, soil, and hydrological characteristics within the vicinity of the property boundaries (Appendix A).

Hydrophytic vegetation dominates areas where the frequency and duration of inundation or soil saturation exerts a controlling influence on the plant species present. Plant species are assigned wetland indicator status according to the probability of a species occurring in wetlands. These indicators are published by USFWS and correspond to different geographical regions. According to the USACE (Environmental Laboratory, 1987), more than fifty percent of the dominant species must be hydrophytic to meet the wetland vegetation criterion. Hydrophytic plant indicator status designations conform to the following:

- Obligate - Plants that occur almost always (estimated probability greater than 99 percent) in wetlands under natural conditions but may also occur rarely (estimated probability less than 1 percent) in non-wetlands.
- Facultative Wetland - Plants that usually occur (estimated probability is greater than 67 percent to 99 percent) in wetlands under natural conditions, but also occur (estimated probability is 1 percent to 33 percent) in non-wetlands.
- Facultative Plants - Plants with a similar likelihood (estimated probability is between 33 to 67 percent) of occurring in both wetlands and non-wetlands under natural conditions.
- Facultative Upland - Plants that sometimes occur (estimated probability 1 percent to less than 33 percent) in wetlands but occur more often (estimated probability is greater than 67 percent to 99 percent) in non-wetlands.
- Obligate Upland - Plants that occur rarely (estimated probability less than 1 percent) in wetlands, but almost always occur (estimated probability is greater than 99 percent) in non-wetlands under natural conditions.

Hydric soils are saturated or inundated for a sufficient duration during the growing season to develop anaerobic or reducing conditions that favor the growth and regeneration of hydrophytic vegetation (Environmental Laboratory, 1987). Indicators of wetland soils include observations of inundation or saturation, dark (low chroma) soil colors, contrasting mottles, or gleying. Additional supporting information includes documentation of a soil as hydric, or reference to wet conditions, in the NRCS soil survey.

Soil sample plots are evaluated by digging soil test pits. Munsell Soil Color Charts (MacBeth, 2000) are used to assess the color, hue, and chroma of representative soils and oxygen reduction reactions (redox) and features associated with anaerobic conditions. Redox features were also characterized by their size, distribution, and frequency of occurrence.

5.0 Wetland Assessment

5.1 Site Area Description and Field Observations

Two (2) springs supply flowing water to two (2) separate riparian corridors that descend the steeply sloped mountainside. The riparian corridors also correspond with avalanche runout chutes. Due to the steep topography and the presence of shallow and exposed bedrock, the aquatic resources are confined to the immediate zone adjacent to the flowing streams.

The winter of 2017-2018 did not produce large quantities of snow in the project area. While northern New Mexico is currently experiencing exceptional drought conditions, the montane vegetation at 10,000 feet

amsl did not appear to be stressed beyond average conditions. Existing water courses appeared to contain normal water flow regimes. One (1) wetland area was dry, yet the vegetation exhibited a typical mountain meadow/marshy habitat. One (1) small seep wetland area contained visible surface water and saturated soils. Two (2) mountain side seeps contained saturated soils and minimal visible surface water.

5.2 Project Area's Relevance to Commerce

Any potential jurisdictional aquatic resources in the project area have no known use related to commerce. No current commercial activity occurring in the project area is related to potential USACE jurisdictional features.

5.3 Hydrology

Wetland hydrology is defined as inundation or soil saturation with a frequency and duration long enough during the growing season to cause the development of hydric soils and plant communities dominated by hydrophytic vegetation. The hydrology of the project area is directly related to the presence of North Gunsight Spring and South Gunsight Spring. Secondly, project area hydrology is a result of a high elevation mountain range that accumulates sufficient snowpack to provide year-round groundwater to the project area drainages and riparian corridors. Small seeps present in the project area produce areas of confined visible water and saturated soils. The annual precipitation averages 12.3 inches. The average annual snowfall for the project area is approximately 300 inches (Western Regional Climate Center 2008).

5.4 Soils

Native soils mapped in the project area consist primarily of the *Presa-Cryaquolls association, steep*, and the *Nambe-Rock outcrop complex, very steep*. Approximately 53% of the project area is occupied by the *Presa-Cryaquolls association* soil unit, and approximately 35% is occupied by the *Nambe-Rock outcrop complex* soil unit (NRCS 2015).

The *Presa-Cryaquolls association, steep* soil unit is composed of 50% *Presa* and 30% *Cryaquolls*. The *Presa* unit forms valley trains located at mountain bases and is composed of colluvium derived from sandstone and shale and/or residuum weathered from sandstone and shale. The unit is classified as well drained; high runoff; and the capacity of the most limiting layer to transmit water is rated as moderately high to high (NRCS 2015). The soil unit is rated as having no frequency of flooding or ponding, and the available water storage in profile is rated as low. The unit is not rated as hydric.

The *Cryaquolls* subcomponent forms mountain valleys and is composed of alluvium derived from granite and gneiss. The unit is rated as very poorly drained; low runoff class; occasional frequency of flooding; and depth to water table of 10-20 inches. The soil unit is rated as hydric.

The *Nambe-Rock outcrop complex, very steep* is composed of 60% *Nambe* and 25% *Rock outcrop*. The *Nambe* unit forms mountain slopes and is found on mountain flanks. The unit is comprised of alluvium derived from granite and gneiss. The unit is rated as well drained; medium runoff class; and a high capacity of the most limiting layer to transmit water. The *Nambe* subcomponent is not rated as hydric. The *Rock outcrop* unit has a very high runoff class and a very low capacity of the most limiting layer to transmit water (NRCS). The subcomponent is unranked in the hydric soil rating category.

5.5 Vegetation

Vegetation within the project area can be described as a montane vegetation community dominated by a spruce/fir coniferous forest. The forest community exhibits old-growth characteristics with very large trees and dense understory with extensive blow-down. Travel across project area slopes can be described as difficult.

Dominant vegetation observed included: Douglas fir (*Pseudotsuga menziesii*), White fir (*Abies concolor*), Engelmann spruce (*Picea engelmannii*), Blue spruce (*Picea pungens*), and quaking aspen (*Populus tremuloides*). Dominant shrubs observed included: Elderberry (*Sambucus racemosa*), thimbleberry (*Rubus perviflorus*), whortleberry (*Vaccinium myrtillus*), gooseberry currant (*Ribes wolfii*), Blue willow (*Salix drummondiana*), raspberry (*Rubus idaeus*), and wild rose (*Rosa woodsii*). Forbs observed included: Bluebells (*Mertensia franciscana*), fireweed (*Epilobium angustifolium*), paintbrush (*Castilleja miniata*), geranium (*Gerranium richardsonii*), cowparsnip (*Heracleum maximum*), monkshood (*Aconitum columbianum*), yarrow (*Achillea millefolium*), lousewort (*Pedicularis racemosa*), strawberry (*Fragaria vesca*), Sweet cicely (*Osmorhiza depauperata*), and dandelion (*Taraxacum officinale*).

5.5 Hydrophytic Vegetation

Hydrophytic vegetation dominates areas where the frequency and duration of inundation or soil saturation exerts a controlling influence on the plant species present. Plant species are assigned wetland indicator status according to the probability of the species occurring in wetlands. More than fifty percent of the dominant species must be hydrophytic to meet the wetland vegetation criterion.

Vegetation rated as Obligate or Facultative Wetland, under the National Indicator Status or the Region 8 Indicator status, were observed within and immediately adjacent to areas of flowing and standing surface water. Species observed within the flowing water courses included: willow (*Salix drummondiana*) (FACW), watercress (*Rorippa nasturtium*) (OBL), False Solomon's seal (*Maianthemum stellatum*) (FAC), Solomon's seal (*Maianthemum racemosum*) (FAC), beaked sedge (*Carex microptera*) (FAC), elkslip (*Caltha leptosepaia*) (OBL), bittercress (*Cardamine cordifolia*) (OBL), and buttercup (*Ranunculus cymbalaria*) (OBL).

6.0 Project Results

A total of approximately 2.993 acres of jurisdictional aquatic resources were mapped throughout the project area. The included delineation map is preliminary until written approval from the USACE (Appendix A).

Two (2) riparian wetland areas were mapped that are associated with the named North Gunsight Spring and South Gunsight Spring. These long sinuous riparian corridors exhibit flowing surface waters that are supplied by the springs. In addition, one (1) large wetland area was mapped that displays marsh habitat yet was mostly dry during this exceptional drought year. One (1) small seep wetland area was mapped. Two (2) small mountain side seeps were also mapped due to visible surface water and saturated soils.

The source points for the North Gunsight Spring and the South Gunsight Spring were recorded with a hand-held Garmin GPS (Appendix C). Both springs possess multiple source points. The source point of South Gunsight Spring appeared historically developed with a metal trough installed at the main source point (Photo Log). Both springs appear to produce equal amounts of water when observed where the streams exit the project area. In addition, all wetland areas and visible seep sources located within the project area were recorded with GPS (Appendix C).

6.1 Permitting

Projects that cause the discharge of dredge or fill material into WoUS require Section 404 permitting by the USACE. Projects that do not qualify for a Nation Wide Permit (NWP) must obtain an Individual Permit. The process for obtaining an Individual Permit requires a detailed alternatives analysis and development of a comprehensive mitigation/monitoring plan.

7.0 LIST OF CONTACTS AND PREPARERS

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112 W. Montezuma Avenue, Suite 3
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Tel: 970-565-4465, ext. 1503

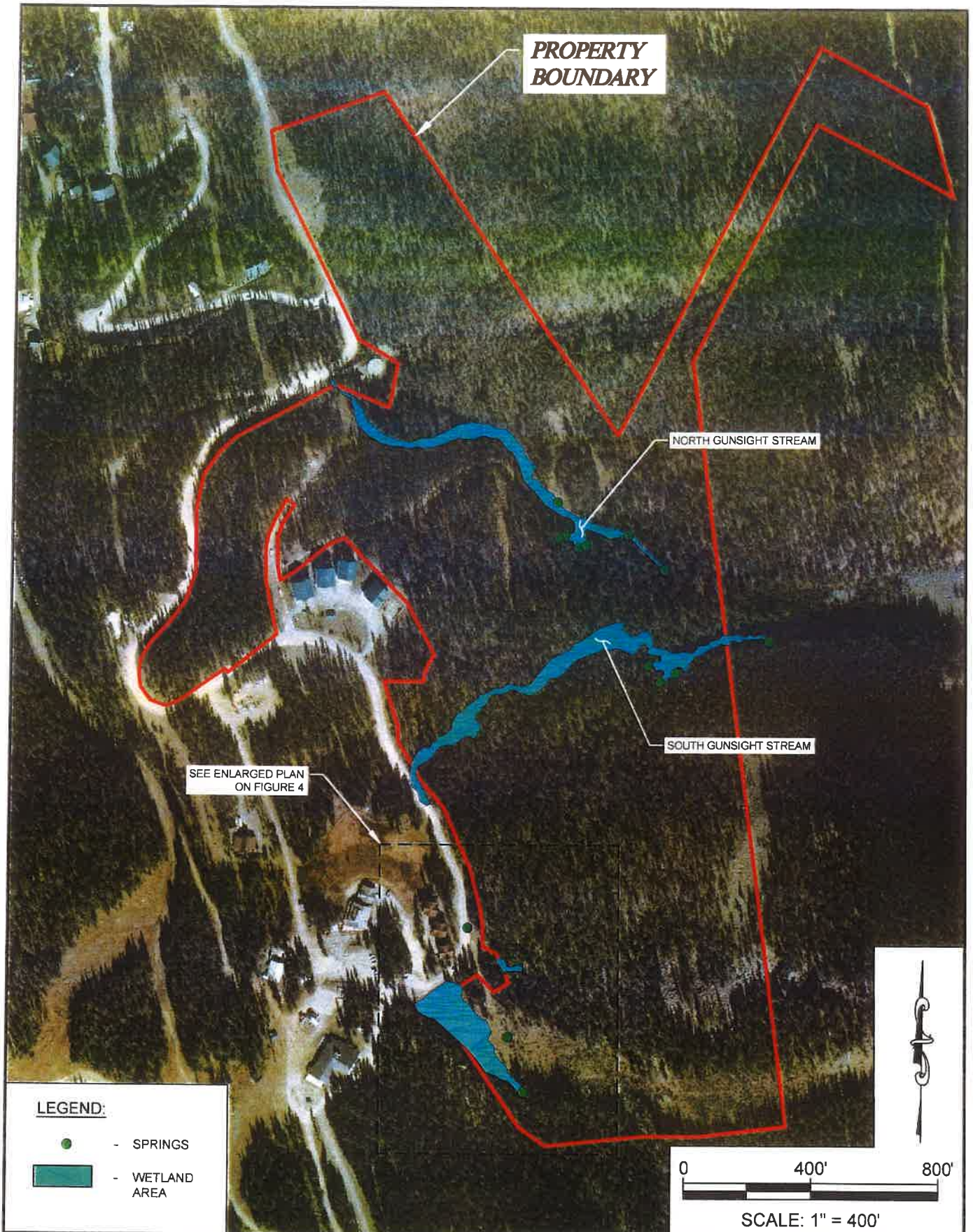
Email: Curtis.Pattillo@Soudermiller.com

8.0 REFERENCES

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APPENDIX A

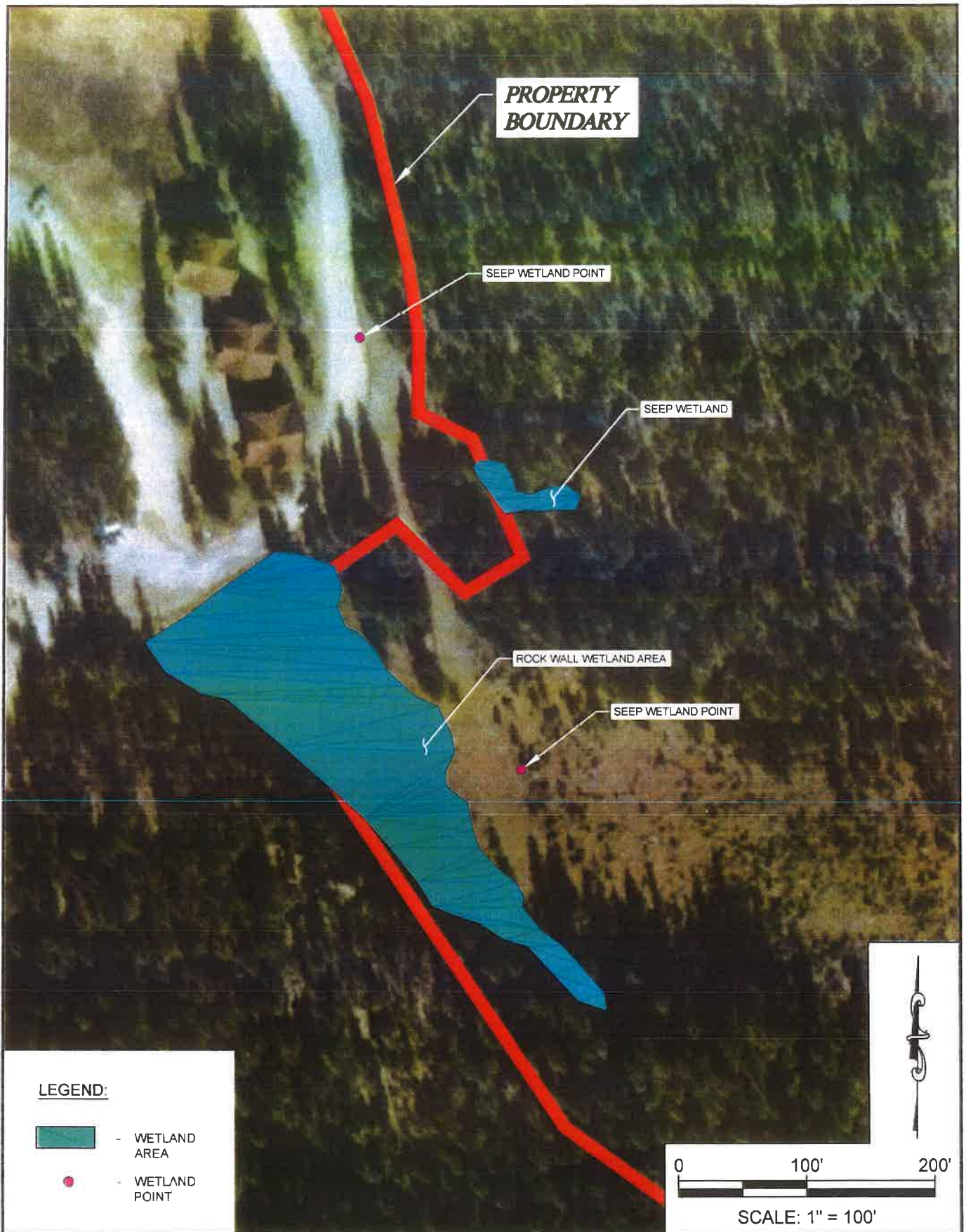
Preliminary Wetland Delineation Maps



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SHOPOFF REALTY		TAOS, NM	
Designed CP	Drawn DJB	Checked RSA	
Date: July 2018			
Scale: Horiz: 1" = 400'			
Vert: N/A			
Project No. 1527099			

APT-12.13 Figure 3



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SHOPOFF REALTY TAOS, NM

ENLARGED WETLAND DELINEATION MAP
TAOS SKI VALLEY

APT-12-14

Designed	Drawn	Checked
CP	DJB	RSA
Date July 2018		
Scale	Horiz	1" = 100'
	Vert	N/A
Project No.	1527099	

APPENDIX B

Site Photos



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Beginning of North Gunsight stream



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Typical riparian corridor along North Gunsight stream



View of source area of North Gunsight Spring



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Typical view of riparian corridor of South Gunsight stream



Source point of South Gunsight Spring



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Roadside seep



Seep Wetland Area



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Hillside seep

APPENDIX C
Supporting Documentation

Shopoff Realty Taos Ski Valley Project**North Gunsight Spring Data**

<u>Description</u>	<u>Latitude</u>	<u>Longitude</u>
Source	36.58091	-105.437
Small Source	36.5808	-105.436
Source	36.58083	-105.436
Source	36.58092	-105.436
Main Source	36.58089	-105.437
Source	36.58063	-105.436
Small Source	36.58119	-105.437

South Gunsight Spring Data

<u>Description</u>	<u>Latitude</u>	<u>Longitude</u>
Small Source	36.57981	-105.436
Small Source	36.57966	-105.436
Suspected Source	36.57974	-105.435
Main Source	36.58003	-105.434

Seep Wetland Data

<u>Description</u>	<u>Latitude</u>	<u>Longitude</u>
Small Source	36.5772	-105.437
Main Source	36.57721	-105.437

Rock Wall Wetland Data

<u>Description</u>	<u>Latitude</u>	<u>Longitude</u>
Seep Source	36.57616	-105.437

Seeps Data

<u>Description</u>	<u>Latitude</u>	<u>Longitude</u>
Roadside seep	36.57754	-105.438
Hillside seep	36.57662	-105.437

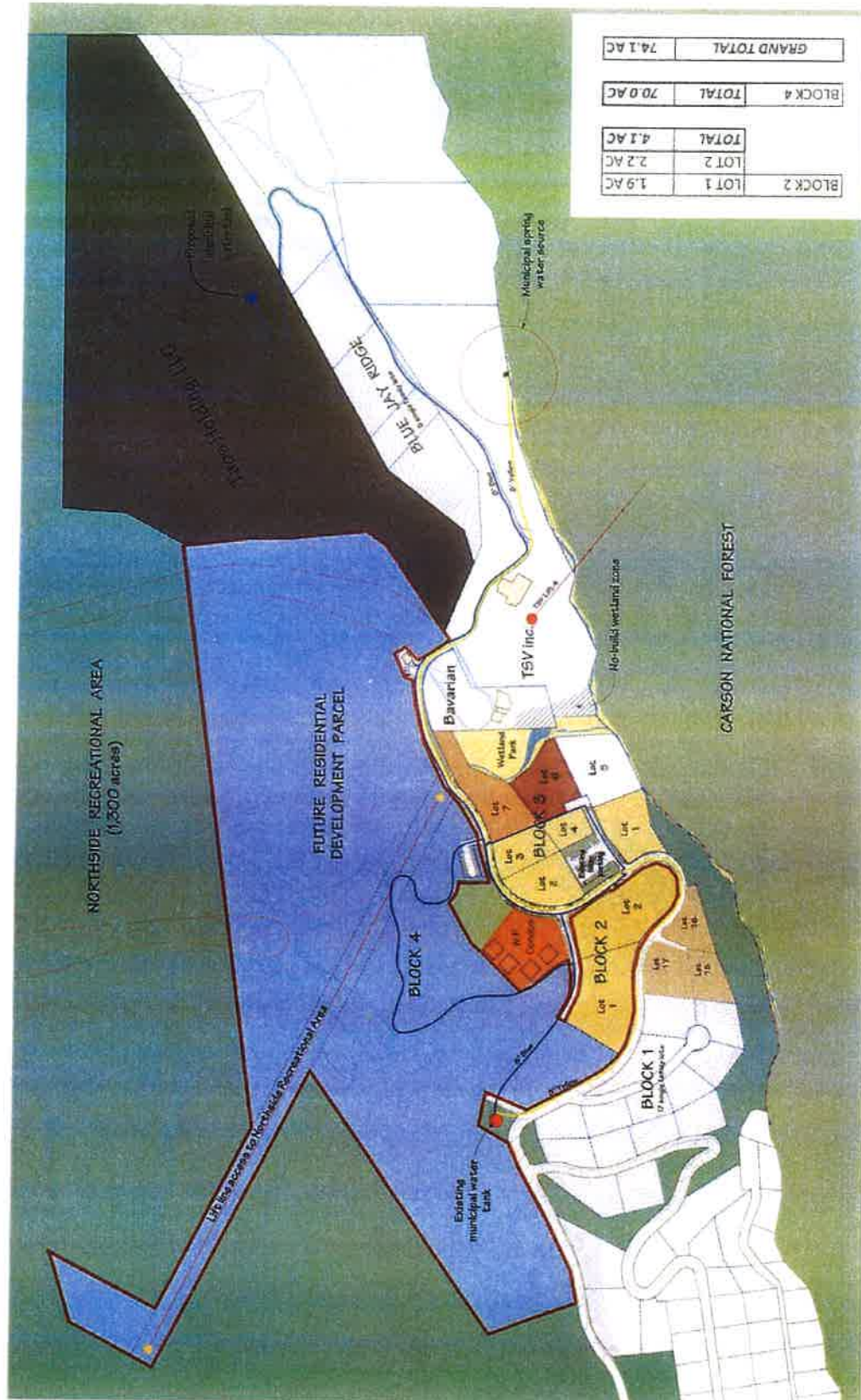
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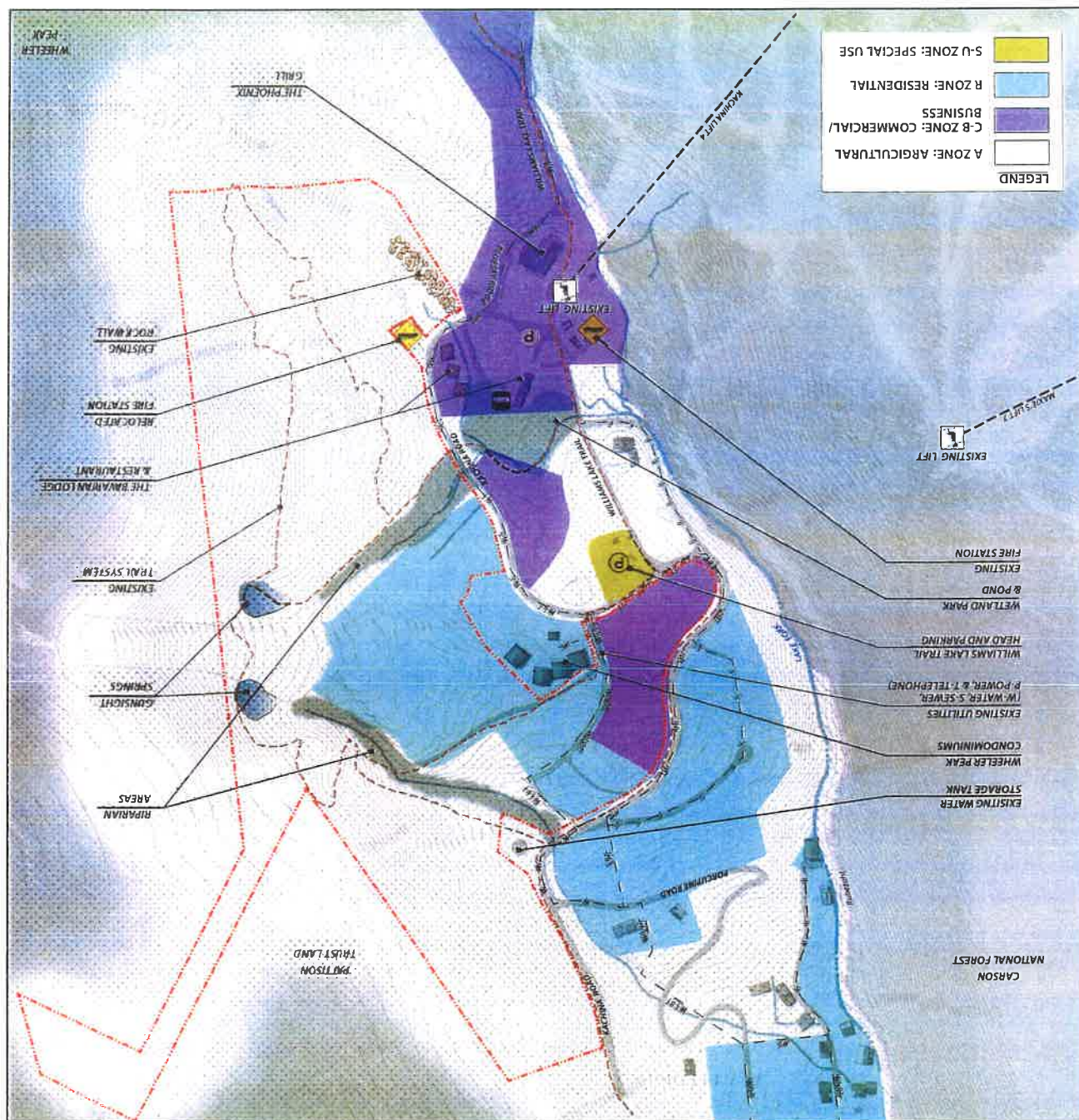
APT-12.23

SHOPOFF
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INVESTMENTS









Redline response to TSVI by Village Public Works Director

October 17th, 2022

Mr. Patrick Nicholson
Village of Taos Ski Valley
Director of Planning & Community Development

Re: Hotel St. Bernard – Village DRT Comment Responses

Dear Mr. Nicholson,

Thank you for the opportunity to discuss our previous Hotel St. Bernard (HSB) Village DRT responses in our October 4, 2022 review meeting. Below please find updated responses and attachments coming out of comments from that meeting. As always please let us know any questions or items requiring further discussion.

Water Consumption

1. Applying the water consumption rates in the water study and the below assumptions to The Blake results in 1,768,000 gallons of water on an annual basis. Please see attached Exhibit #1 Water Study - Blake Comparison, for comparison to the previously submitted Exhibit #2 – CUP Water Demand Analysis, dated September 1, 2022. Also, for your reference, please see the attached Exhibit #4 – Village Metered Data, dated July 31, 2022.
 - a. 40% annualized occupancy
 - b. 24 multi-family units (penthouses and suites)
 - c. 65 standard rooms
 - d. 1 pool (vs 2 pools for HSB)
 - e. 50% less fitness area than HSB
 - f. 75% less spa area than HSB
 - g. Actual data on The Blake is 1,777,500 and not the 1,768,000 gallons
 - h. Yes, the Baseline number of 1,553,000 gallons is in the Water Study – Actual average from 2008-2019 is 1,620,369 gallons.
2. The water consumption for The Blake for the past twelve months ending July 2022 was 1,687,000 gallons (per Village water data). This is 87,000 (5%) gallons less than the projection above with the projection being more conservative.
 - a. The month of March of 2022, The Blake demand was 341,450 gallons
 - b. Although the average you quoted of 1,687,000 gallons is a good number for annual comparison it is the month of March that is in question. The Blake and the Residence demand for the month of March was 25% of all the demand for the current capacity. In the spreadsheet with the adjusted flows, in 2027 we will be projected to be above 500,000 gallons in surplus that would be improved by repairing the leaks.
3. Within the water study is a focus on the month of March since that is the most sensitive time of the year when comparing supply and demand. Anticipated water demand in the water study for March 2022 was 1,675,000 gallons. Per Village data, the actual consumption was 1,657,000 gallons. This is a negligible difference that reinforces the underlying assumptions in the water study.

- a. Although the pattern held with the assumption and thankfully the system only had 67.26% unaccounted water for the month, the system is very suspect to leaks or malfunctioning equipment. A simple leak on an altitude valve below the green tank will empty the tank overnight. The Water Study does support that if leakage is down the system will support the Village water demands. The Blake itself has also had leaks which has affected the Green Tank volume, but fortunately that did not happen in the month of March when we would have been hard pressed to re-fill the tanks.
4. We feel a comparison of the Multi-family rate (90 gallons/occupied night) vs Hotel rate (120 gal/occupied night) should consider the following:
 - a. Alpine Village Suites (hotel) product which was recognized to have extremely high consumption for its size when the water study was completed inflated the hotel rate. For the seven months ending July 2022 Alpine Village has consumed 407,000 gallons which is identical to The Blake Residences which has at least 60% more square footage. Without Alpine Village hotel rate should be around 100 gallons/night.
 - b. On the flip side The Blake Residences has used about 25% more water than anticipated in the water study which would put it's consumption at 110 gallons/night.
 - i. The Water Study has the Blake Residence at 122 gallons/night, and which would actually be 152 gallons/night with the 25% as per your statement.
 - ii. Compared to the average since 2019-2022 the average was 243,633 gallons for the month of March. The Blake was up 40.15% from the average consumptive demand.
 - c. Overall, these adjustments pretty much cancel each other out for HSB given its mix of hotel and multi-family space.
 - d. Although it would be nice to be able to remove the Alpine Village out of the equation, we can not do that because it is an actual number.
 - e. If we used the water study numbers that were not included in the base line for the Blake Penthouse and Residences that number would be greater than 110.
5. We anticipate the HSB requiring 275,000 gallons of water each March. When looking at the Village water capacity in the month of March per the water study it would require a nominal improvement on the 75% loss/leakage rate to cover this added demand. Given the joint efforts and commitments by TSVI and the Village to address this critical matter as a priority there is high confidence this nominal improvement will be achieved, at a very minimum, by the time the HSB re-opens.
 - a. I prefer using the 122 gallons per night because we can not control how much water a consumer will use. As you pointed out, The Blake Residences has used about 25% more water than anticipated which would mean the projected 274,506 could be an extra 68,626 gallons in the month of March for a total of 343,132.
 - b. This reinforces the need to use at least the 122 gallons/night that is called out on the Water Study for the Blake Residences.
6. These findings reinforces the Water Study and associated Land Use Assumption and projected water consumption. Please note, the Blake Residences are using more water than the assumed 90 gal/occupied night vs actual of 110 gal/occupied night. This difference though is negligible in gross consumption.

- a. I understand the negligible of the gross consumption but at this point we are talking about the month of March and not the gross consumption. Another point, the prediction is showing HSB being closed in the month of May but the Blake Residences and The Blake are showing constant use throughout the year which could be the same for HSB.
- b. Please keep in mind that the surplus must be available for fire suppression and not just for consumption. If we have a fire in the month of March whatever cushion that was there is gone because at a minimum, we will have to re-fill one tank with a volume of 250,000 gallons in one day.
- c. Best case scenario for a fire would be using 235,800 gallons to the worst case of 470,160 gallons. Using the average volume from two extremes would be 352,980 gallons. (Please keep in mind that NMED per the Water Report would require 960,000 gallons)
 - i. We like to maintain about 75% capacity at a minimum in our tanks which be seen with the example below:
 1. Fire between Green Tank and Pioneer Glade Tank storage capacity would be 187,500 gallons.
 - a. All production flow would be consumed along with tank storage. The lowest estimated 5-day average flow projected from the historic data is approximately 126 gpm (181,440 gpd) in 2013. (Water Study) Compared to 983 gpm for a 4-hour fire flow which would be 235,920 gallons needed.
 - b. The Green Tank flow is the lynch pin to the whole system. With this scenario, the tank would be emptied, and we would be short 18,180 gallons after 4 hours of the required 235,920 gallons.
 - c. Too much flow going into the tank will hinder the current booster pumps going up to the Kachina Tank (mechanical failure if not turned off)
 - d. The three (3) pressures zones below the Green Tank will be without water if the tank goes empty.
 - e. It would take over a day to refill the tank with 126 gpm without any demand, which would not necessarily be the case.
 - ii. The numbers in the Water Study are now a year behind and in theory are two years behind in seeing benefits of any repairs. The meter installation was proposed to be down in the Summer of 2022 which did not get done (2023). With the installation of the meters, operations would be able to analysis which pressure zones have the anomalies. The following construction season, the system would start to locate and repair leaks (2024). Although 2026 has a positive number, the reliability of the system in theory is more like 2027 when the surplus is over 500,000 gallons.

Table ES-1. Baseline and estimated future (25-year) water demand and water supply.

Growth Scenario:	Water Service	Existing + 20%	Base Village & Kachina	Amizette (existing)	Amizette (expansion)
Baseline					
Land Use Assumption (see note A)					
Single Family Homes	103	-	106	21	41
Hotels	108	-	78	90	-
Multi-Family	276	-	323	36	-
Total Lodging Units	487	-	507	147	41
Total - Cumulative Units	487	487	994	1,141	1,182
Non-Residential Space (SF)	155,272	-	50,300	-	-
Cumulative (SF)	155,272	155,272	205,572	205,572	205,572
Water Demand ('000 gal) (see note B)					
Baseline (2019 data)	1,553	-	-	-	-
Growth	-	311	1,749	223	56
Total Demand (Cumulative)	1,553	1,863	3,612	3,835	3,891
Water Capacity Scenarios ('000 gal) (see note C)					
1. Current Capacity w/75% leakage	1,599	1,599	1,599	1,599	1,599
Surplus/(Shortfall) – thousand gallons	46	(264)	(2,013)	(2,236)	(2,292)
Surplus/(Shortfall) - %	3%	-14%	-56%	-58%	-59%
2. 50% leakage + 12.5% climate loss	2,812	2,812	2,812	2,812	2,812
Surplus/(Shortfall) –	1,259	949	(800)	(1,023)	(1,079)

thousand gallons					
Surplus/(Shortfall) - %	81%	51%	-22%	-27%	-28%
3. 35% leakage + 12.5% climate loss	3,656	3,656	3,656	3,656	3,656
Surplus/(Shortfall) – thousand gallons	2,103	1,793	44	(179)	(235)
Surplus/(Shortfall) - %	135%	96%	1%	-5%	-6%
4. 25% leakage + 12.5% climate loss	4,218	4,218	4,218	4,218	4,218
Surplus/(Shortfall) – thousand gallons	2,665	2,355	606	383	327
Surplus/(Shortfall) - %	172%	126%	17%	10%	8%

(A) See Figure ES-2 Land Use Assumption schedule for details.

(B) Based on 2019 data from VTSV with reductions for Pizza Shack, Terry Sports, Phoenix Grill leak and Hotel St. Bernard which are non-recurring or incorporated into the future growth projection.

(C) Climate change is assumed to reduce water capacity by one-half percent (.5%) annually for a 12.5% loss over the next 25 years.

DRT Review Nov. 2, 2022

Summary of the TSVI Letter, dated Oct. 17, 2022:

- Currently, the Village of Taos Ski Valley does not have the available Water Capacity to support your project (confirmed by the Water Study). Approval of your project is conditional on the repair of the water distribution system. With our joint efforts to improve the system but it is only contingent on repairing the system leaks at the projected rate.
- For the ski season 2025-2026, it is proposed that there will significant improvement in the Water Capacity per the Water Study projections. The Village capacity will improve from 1,599,000 to 3,150,000 with water leak repairs. The demand for water will also increase, so building will have to be done at the owner's discretion. Based on the actual number of the demand, we start to see some improvement in 2024 but this may be negligible because the funding for water repairs became available at the end of the 2022 construction season. Master meter installations will happen in 2023 but that is not a guarantee that this will give the Village enough time to determine what section of the system needs repairs.
- Baseline from the Water Study projection verses the Actual Data Points (A.D.P.) is a little off. The Water Study baseline is 1,533,000 gallons but the actual Baseline is 1,620,000 gallons. Although it could be considered a negligible amount it is still a significant amount when you are trying to account for every gallon.

Data from the Water usage and Phoenix Spring tracking

1,739,560	2008
1,689,440	2008-2009
1,667,960	2008-2010
1,697,610	2008-2011
1,701,069	2008-2012
1,673,811	2008-2013
1,646,932	2008-2014
1,630,477	2008-2015
1,621,720	2008-2016
1,624,391	2008-2017
1,593,237	2008-2018
1,620,364	2008-2019

Baseline Actual: comes from the March average
from 2008 thru 2019

- The Blake and the Blake Residence water system numbers are not necessarily as projected in the Water Study. Yes, there are other entities that are under each master meter, it does not change the fact that the demand rate in March is considerable compared to the Annual Average. Although I did include the annual average in the calculations, it is the month of March that is critical and that A.D.P. in 2022 was well over the Water Study number of 104,000 compared to

463,159 gallons actual consumed The current Annual demand for the two would be 202,307 and not 104,000.

Data from the Water usage and Phoenix Spring tracking

1. The Blake
 - a. Annual monthly average from 2017-2022
 - i. 149,826 gallons
 - b. March 2022
 - i. 341,450 gallons
 2. The Blake Residences
 - a. Annual monthly average from 2021-2022
 - i. 52,481 gallons
 - b. March 2022
 - i. 121,709 gallons
 3. The projected quantity for these two units from the Water Study
 - a. Annual monthly projection
 - i. 104,000 gallons
 - b. Actual Annual monthly Average
 - i. 202,000 gallons
 - c. March 2022
 - i. 463,159 gallons
 - ii. 27.945% of the entire March 2022 demand and over the projection of 104,000 gallons.
- **Water Fire Storage requirements was excluded from demand numbers**, but it is an important component to everything. The minimum amount needed for a fire per the Water Study would be 235,000 gallons
 - Best case scenario for a fire would be using 235,800 gallons to the worst case of 470,160 gallons. Using the average volume from two extremes would be 352,980 gallons. (Please keep in mind that NMED per the Water Report would require 960,000 gallons)
 - 235,000 gallons is roughly the amount that we store in each tank. If a fire would happen in March, that volume would need to be replaced and that is why the amount is in the calculation.
 - Adjusted spreadsheet from the CUP using actual data points

	Actual	2022	2023	2024	2025	2026	2027
Water Capacity		1,599	1,599	2,227	2,849	3,150	3,760
Water Demand							
Baseline	Baseline	1,620	1,620	1,620	1,620	1,620	1,620
BR & Penthouse	Annual average	202	202	202	202	202	202
Visitation Growth			31	62	93	124	124
Multi-Family Growth					109	109	109
Single Family Growth		10	20	29	39	49	49
Commercial Growth		9	20	32	170	193	193
HSB	120 gallons per night					299	299
Fire Storage and demand		235	235	235	235	235	235
Total Water Demand		2,076	2,128	2,180	2,468	2,831	2,831
Surplus/(Shortfall)		(477)	(529)	47	381	319	929

BEFORE THE VILLAGE OF TAOS
SKI VALLEY'S PLANNING AND
ZONING COMMISSION

**TAOS SKI VALLEY, INC.'S OBJECTIONS AND RESPONSES
TO VILLAGE OF TAOS SKI VALLEY'S "STAFF REPORT
(REVISED AND UPDATED): CONDITIONAL USE PERMIT:
HOTEL SAINT BERNARD, 112 SUTTON PLACE"
(Filed January 30, 2023)**

The Applicant Taos Ski Valley, Inc. (hereafter "Applicant" or "TSVI") hereby files the following written Objections and Responses to the Village of Taos Ski Valley's ("Village") Staff Report (Revised and Updated - January 30, 2023) to TSVI's Application for a Conditional Use Permit ("CUP") for its proposed redevelopment of Applicant's Hotel St. Bernard Property ("HSB") to be made part of the official record of the Village's Planning and Zoning Commission's ("P&Z") public hearing record thereon February 6, 2023, together with Exhibits 1, 2, and 3 attached hereto.

I. INTRODUCTION

A. Procedural History of Staff Review / Unreasonable and Unprecedented Administrative Delay in Village Staff Review of CUP Application

1. Staff Review History. TSVI's CUP Application was filed 8/1/22. By Village Ordinance No. 17-30, Sec. 26, 2.2, there is a 45 day review period. At present, the Staffs review has exceeded 180 days and is continuing. The delay has been caused by the Planning Officer's (Staff) repeated demands for additional repmis and studies on issues outside the scope of the Planning Officer's authority and outside the scope of the Village's Ordinance for a Conditional Use Pennit (CUP). Although the Applicant has attempted to accommodate the Planning Officer's requests, new and different and further requests and unlawful conditions have been made and imposed by the Planning Officer that are beyond the scope of a

CUP Review (regarding water, avalanche, parking, Army Corp of Engineer sign off regarding wetlands, pedestrian safety, all summarized hereafter).

The Applicant was initially informed that Applicant's CUP P&Z Hearing would be scheduled for the October 2022 and then rescheduled for the November 2022 Planning and Zoning Commission hearings. When neither occurred, the Applicant had no alternative but to submit a Notice of Appeal requesting a December hearing. That hearing was scheduled for 12/5/22. On Thursday afternoon 12/1/22 the Applicant received the Staff Report which listed out eight (8) Project Findings & Issues and nine (9) Staff conditions. The Applicant had not seen half of these items and those that Applicant had seen were assumed had been "settled" in prior communications and in-person meetings with the Planning Officer. Given the duration of time for review of the Application and the over 40 direct communications that had occurred at that time between the Applicant and the Planning Officer (this documented by logged communications), it seemed at best extraordinary and at least intended to provide the Applicant with a minimum amount of time to prepare to discuss these matters; and seemingly done for the purpose of further delaying the review process to administratively "kill" the project by delaying the CUP hearing before the P&Z beyond the critical 2023 construction season (April – October 23) and by imposing new "poison pill" conditions and requests for additional reports and documents from other agencies (ACE) and professionals. (New Mexico licensed engineering analysis confirming structural integrity of the building). Due to these circumstances, the Applicant requested a postponement of the 12/5/22 hearing to address all the new conditions and requests.

Attached (Exhibit 1) is the Applicant's current Log of all communications with the Planning Officer which now numbers over 60 communications. No other CUP application in the history of the Village of Taos Ski Valley has been subjected to this amount of time and scrutiny, and Applicant is at risk of losing the 2023 construction season if P&Z and/or Council imposes Staff's Proposed Conditions.

2. Unprecedented (and Unlawful) Conditions Imposed by Staff for This HSB CUP Application. Applicant has relied on Village Staff and the P&Z's own past practices, precedents, and policies in interpreting the Village

ordinances and on the Planning Officer and P&Z's decisions on similar CUP applications for hotel and restaurant redevelopment applications in the Village; namely, the Staff's (Planning Officer Nicholson) and this P&Z's actions and decisions on the 2021 CUP Application to expand the Brownell Chalet Property for a "full-service (50)" restaurant on Thunderbird Road under identical circumstances with similar parking and "pedestrian safety" issues. The Staff Report on the Brownell Chalet CUP (attached as Exhibit 2) dated September 13, 2021 (after only a 30 day review) recommended approval with NO conditions – and with no mention of parking or pedestrian safety. This same P&Z approved the Brownell CUP on September 13, 2021 without conditions as well. Staff's Report here is therefore arbitrary, capricious, and discriminatory on its face based on this historical precedent.

3. Irreparable Economic Injury / Risk of Loss of 2023 Construction Season Caused by Staff's Review Delay and the Imposition of Staff's Unlawful Conditions. The unreasonable review delay caused by Staff and Planning Officer combined with the specter of this P&Z adopting the Staff's conditions (as stated) outside the scope of a CUP Application in its decision, especially those relating to parking, water, avalanche, and obtaining Army Corp of Engineer approval (completely unwarranted) will delay this Project from ever being built during the upcoming 2023 construction season in Taos Ski Valley (April – October 23). This will inevitably cause severe economic damage to the Applicant (loss of revenues from a completed hotel and restaurant in 2023). This will also cause economic damages to the public by way of lost jobs, employment opportunities, construction jobs, and lost revenues to the Village itself (by way of impact fees, gross receipts tax return, etc.). If the P&Z adopts Staff's condition regarding "no available water service" for one to three years (filed in the public record), the P&Z will be, in effect, imposing a Village-wide "*de facto*" water moratorium against all further development in Taos Ski Valley. Such action will also cause an "inverse condemnation taking" of the Applicant's real property interests under the 5th and 14th Amendments of the U.S. Constitution, and Applicant reserves its right to seek damages therefor against the Village in the future in that regard.

B. Standard of Review.

Rule 1-074R NMRA provides the following standard of review for the New Mexico District Courts of Administrative decisions / actions of the Village's P&Z and Council on this CUP Application for TSVI's HSB:

"R. Standard of review. The district court shall apply the following standards of review:

(1) whether the agency acted fraudulently, arbitrarily, or capriciously;

(2) whether based upon the whole record on appeal, the decision of the agency is not supported by substantial evidence;

(3) whether the action of the agency was outside the scope of authority of the agency; or

(4) whether the action of the agency was otherwise not in accordance with law."

(Emphasis added).

C. Summary of Legal Objections to Staff Report (Revised and Updated) Filed January 30, 2023

As more specifically set forth below, the P&Z should reject and not adopt (without substantial revision) Staff's recommended "Conditions" #1 (Pedestrian Safety), #2 (Water Moratorium), #5 (Avalanche), #6 (Army Corp of Engineers [ACE] Letter regarding wetlands), and #7 (Roof Design Review) because the Staff and Planning Officer are 1) acting outside the scope of their statutory duties in recommending these "conditions" of approval; 2) unlawfully interjecting matters outside the scope of a CUP hearing by these conditions, and 3) acting in a manner that is selectively discriminatory against TSVI and inconsistent/contradictory to Staff / Planning Officer's and this same P&Z's past review policies, actions, and decisions on other, similar projects (Brownell Chalet Restaurant CUP in 2021).

II. SPECIFIC LEGAL OBJECTIONS AND COMMENTS TO STAFF REPORT (FILED JANUARY 30, 2023)

(Redline with Deleted Language from Prior Staff Report Dated December 5, 2022 Omitted)

Staff Report (Revised and Updated)

Conditional Use Permit: Hotel Saint Bernard 112 Sutton Place

1. Case Summary

Date of Hearing: December 5, 2022 -postponed per the request of the applicant.
Rescheduled to: February 6, 2023

APPLICANT'S RESPONSE: The "Rescheduling was necessitated by the unwarranted delay actions of the Village Planning Officer. See: Applicant's Comments in Staff Review History, Section I.A.1 above.

Application Received: August 2, 2022
Date of Posting: November 17, 2022
Reposted: January 19, 2023
Plan Review Fees: \$1,500 -Variance Request

APPLICANT'S RESPONSE: This is a CUP Application, not a variance request. The Applicant seeks no change of use from the historic and existing conditions of the HSB. Planning Officer has noted already that the HSB "masterfully adheres" to the Village Comprehensive Plan and that Applicant has "taken great care to meet and at times exceed" these zoning and design requirements of the Village. See provisions below.

Development Impact Fees: \$1,865,560.00 (estimated)

Project Description: The ski corporation, TSVI, has proposed an extension redevelopment of the Hotel Saint Bernard (HSB) property. The current facilities and buildings and the adjacent Mogul Medical building will be removed, and the entire area reimagined into a high-end multiple structure luxury resort. The proposal consists of three separate hotel buildings, a pedestrian plaza, commercial space for two fine dining restaurants, a spa facility, and underground parking. Access to the site is at the southern terminus of Sutton Place within the Core Village Zone.

The project conception and articulation masterfully adheres to and gives extensive consideration to the Village Comprehensive Plan as it relates to the redevelopment potential, desired land use, recreational focus, and village aesthetic character for this parcel within the Core Village Zone.

Extensive site redevelopment specifications, plans, renderings, and Code compliance documents are provided by the applicant and are attached as Exhibits -see *Exhibit A: Conditional Use Permit and Certificate of Compatibility Application Narrative, Aug. 1, 2022*; and *Exhibit B: Hotel Saint Bernard CUP Submission, Aug. 1, 2022*.

Prior Actions/Approvals: None

2. Zoning Analysis:

The subject property is located 112 Sutton Place and is zoned Core Village (CVZ).

A. Section 9. Design Standards

The design standards promulgated in Section nine are intended to ensure proper site planning and architectural compatibility to established and desired Village aesthetic norms. The submitted plans comply with the stipulated standards and guidelines.

- B. The CVZ augments its zoning principles with performance standards expressed through Supplemental Regulations and Development Requirements. *Performance standards are intended to encourage mixed-use development/redevelopment and employ flexible zoning principles that guide density, massing, and setbacks to encourage a combination of residential, hotel, commercial, and/or office use to help the Core Village Zone ensure a socially vibrant and economically sustainable environment. These standards should also encourage pedestrian-level commercial and amenity uses that animate the pedestrian experience within this zone, integrate building massing along pedestrian-friendly streets, plazas, walkways, and the river walk and create places and spaces in which residents and resort guests enjoy spending time.*

The applicant has taken great care to meet and at times exceed these Requirements.

- C. The Planning and Zoning Ordinance 2022-30 instructs the Commission in Section 26:4 to follow the criteria below when considering and granting a Conditional Use Permit request:

The Commission shall not approve any Conditional Use Permit

unless satisfactory provision has been made concerning the following, where applicable:

1. Access to property and proposed structures thereon, with particular reference to automobile and pedestrian safety, traffic control, and emergency access in case of fire, flood, avalanche or catastrophe.
2. The economic, noise, glare, or odor effects of the Conditional Use on adjoining properties.
3. General compatibility with adjacent properties and other properties in the Village with regard to height, landscaping, setbacks, lighting, signs, parking, and design standards when adopted by the Village Council.
4. Compliance with supplementary regulations as delineated in zone in which the property will be located.
5. All improvements required by the Village Planning Department and/or Village Engineer in the Public Works Plan have been completed or completion plans, designs and costs are approved by an agreement approved by the Village Council.

At present, the applicant complies with most, but not all, of the CUP Guidelines. For the project proposal to be fully compliant with the Village Zoning Code and Development Regulations, the Conditions of Approval stipulated below are necessary and are highly recommended for adoption by the Commission.

APPLICANT'S RESPONSE: See specific responses below.

3. Project Findings & Issues:

A. Water Supply

Currently, there is insufficient water supply, caused by on-going extreme system leakage, to serve the proposed redeveloped Hotel Saint Bernard property -see *Exhibit C: Redline response to TSVI by Village Public Works Director, Nov. 2, 2022; and Exhibit D: DRT Review Nov. 2, 2022 Summary of the TSVI Letter, dated Oct. 17, 2022*. It is anticipated that within the next one to three years, repairs will be successfully completed on the water distribution system to allow the Village to provide water in adequate quantity to meet the increased demand at the project site. However, at this time, the date is uncertain, and water utility service cannot be guaranteed.

No Will Serve Letter will be issued at this time nor until the Village Public Works Director can assure the Village Council that all current fire suppression and existing water utility customer needs are met. The Director will base his determination upon quantitative data generated by the Village water utility system, which regularly tracks and measures supply, storage, and demand levels.

APPLICANT'S RESPONSE: Staff comments on water are outside the scope of a CUP hearing. They are also outside the scope of the Planning Officer's authority to impose any water conditions at a CUP hearing. The water comments are also misleading and incorrect. This is a temporary water distribution problem at this time, NOT a water availability issue. There is sufficient water to serve this HSB Project, and Applicant is entitled to a Will Serve letter at the time of issuance of the Building Permit. Staff Report, in effect, as written, declares a water moratorium for the entire Village.

Over the time frame of this Winter's line breakage in question, the Core Village never lost water other than for a brief period of time and due to reallocation of water by the Public Works Department. The existing infrastructure in the Core Village is in excellent condition and is serviced by the Pioneer Water Tank which insures adequate water

pressure to this zone. It is arbitrary to leave determination of a Will Serve letter upon an undefined "determination" of the Public Works Director in consultation with other, undefined "Village Staff" and is without lawful authority to do so.

The Applicant is working closely with VTSV to address water distribution system and at the cost of \$1.5 million will install master water meters in summer of 2023 to better control and manage the water system. Dennis Engineering, a licensed New Mexico engineering firm and co-author of the TSVI sponsored VTSV Master Water Plan, has been hired by VTSV to evaluate this system and would be more appropriately placed to confirm that supply is adequate.

B. Development Impact Fees

Development Impact fees are estimated at \$1,865,560.00. The Project Assessment Sheet was provided to TSVI on August 30, 2022. The exact figure will be determined upon submission of detailed square footage plans with the building permit application. The assessed amount could also be significantly lower given the prevailing Master Development Agreement (MDA) with the developer. The MDA states that a 25% discount is provided upon formal request and a further credit is allowed for direct financial contributions to Capital Improvement Projects.

At present, no discounts nor credits have been requested nor are expected. From a thorough record review by the Village Clerk and Attorney, any previous credits, including system development fees, which may have applied to the property, have been extinguished and are no longer valid.

APPLICANT'S RESPONSE: Staff Report's comments on impact fee (DIF) is outside the scope of a CUP hearing. Gratuitous comments regarding what "credits" Applicant is entitled to disregard the pre-existing hotel use and conditions and are legally incorrect. This will be

addressed / challenged by Applicant in the future at the time of application for Building Permit.

C. Parking Requirements

From Village Ordinance 2022-30:22:2 and per the revised Parking Diagrams and tables -(see *Exhibit E: HSB CUP Parking Diagrams, Aug. 30, 2022*) provided by the applicant, 109 total parking spaces are required for the proposed facilities. This total includes calculations for hotel and commercial use designations as well as for projected staff at the required 1:5 ratio. On-site underground parking is shown to accommodate a maximum of 65 spaces -62 spaces by mechanical stacker, and three (3) handicap spaces. The two (2) service loading spaces indicated are not eligible to be added per Ordinance 22-30:22:1.

The remaining 44 spaces are newly proposed to be located on-site within a proposed expanded HSB property parcel. See Exhibit I - Sketch of Proposed Lot Line Adjustment & HSB Remote Parking diagram.

APPLICANT'S RESPONSE: This comment (and Staff conditions) are outside the scope of a CUP hearing. Nevertheless, Applicant has submitted a proposed lot line adjustment to the HSB property to accommodate a fully "satisfactory" overflow parking lot thereon, together with a proposed deed and separate access easement therefor that will fully satisfies this Staff "condition".

D. Sutton Place Pedestrian Safety

Pedestrian safety at the southern terminus of Sutton Place is negatively impacted by the Hotel Saint Bernard redevelopment proposal -See Exhibit E: *Upper Sutton Streetscape Improvements, Dec. 2022*. Increased deliveries and patron vehicle traffic on Sutton Place, directly resulting from the greater density and intensity of use

of the property, will conflict with children and other users accessing the nearby Gondolita. The Gondolita primarily carries young skiers and their families to the Rio Hondo Learning Center (formerly the Children's Center) and back to the main Village Plaza and commercial center. Streetscape improvements are necessary to address this situation and are requested by the Village Public Safety Director -see *Exhibit F: Traffic Safety Concerns, Oct. 2, 2022*. Lacking a detailed traffic study, which the applicant has not provided, the proportional project traffic impact will be estimated by Village staff and assigned to the ski corporation.

APPLICANT'S RESPONSE: Staff Report states that "the southern terminus of Sutton Place is negatively impacted by the HSB redevelopment proposal". Applicant challenges this vague conclusion as factually incorrect. The Planning Officer ignores many conditions that have altered the existing conditions:

- Relocation of Mogul Medical substantially reduces traffic in this area.
- The proposed project will park guests on property and avoid shuttling traffic to and from the parking areas which had been the norm.
- The existing grade of the road exceeds 18% in portions and the proposed new grade will conform to VTSV standards.
- The hotel entry drive apron to the south of the proposed stop signs now melted. Prior to entering the intersection at Sutton Place.
- The width of the road will be expanded from the existing 12'-0" to 20'-0" wide meeting VTSV requirements.
- An alternative pedestrian walkway is provided to relieve pedestrian traffic from Gondolita plaza.
- Mogul Medical visitor parking and ambulance parking have been eliminated from the hotel entry drive, and will not impede (2) direction vehicular access.

Detailed documents have been provided to the Planning Officer which confirm all of the above and streetscape improvements have been provided. At no point has the Planning Officer provided any specific recommendations or alternatives other than rejecting the submittal. Sutton Place is a dedicated public road and the Village itself has the duty to improve any "negative" impacts by traffic signs, crossing guards, etc. This is also a "condition" never imposed before by the Village P&Z / Village Staff especially not on the Brownell Chalet CUP, which presented far worse pedestrian safety concerns on the most heavily trafficked road in TSV – Thunderbird Road, which receives hundreds of daily pedestrians, some of whom are children, from the skier drop off..

E. Avalanche Safety Measures

TSVI has provided a report by Rachel Moscarella, TSVI's Director of Snow Safety, analyzing the potential avalanche hazards at the HSB redevelopment site -see *Exhibit G: TSVI Letter Nov. 14, 2022*. What remains to be submitted, per Village Ordinance 2022-30:7: 1-2, is a report indicating -

potential physical forces created upon the proposed improvements and structures and a structural analysis of the proposed building or structure prepared and sealed by a New Mexico licensed engineer reflecting an engineering analysis and design which states that the design of the building or structure can withstand the potential force from an avalanche as set forth in the avalanche report referred above. This analysis shall be required only if the referenced report indicates that an avalanche hazard exists.

APPLICANT'S RESPONSE: The Planning Officer's request to have an "engineering analysis" is beyond the scope of a CUP hearing at this time. Nevertheless, the "Report" requested is underway (being prepared) and is, and will be, part of the Building Permit Application in which the Applicant's engineer and architect of record will certify the

stated requirements.

F. Drainage Plan

A stamped project drainage study and stormwater prevention plan will be provided by TSVI upon submission for a Certificate of Compatibility -see *Exhibit H: Vertex, Sept. 21, 2022*. All costs bore by the Village for outside consultants necessary for a thorough review, by Ordinance, shall be assigned to the applicant.

APPLICANT'S RESPONSE: This request for engineered drawings is beyond the scope of any CUP application hearing or any condition therefor. Applicant will submit such engineered drawings at the time of the Building Permit Application.

G. Wastewater Treatment Capacity

According to the Village Public Works Director, at the present moment, there is sufficient capacity to service and treat all project generated waste upon full buildout at the off-site expanded Village Waste Water Treatment Plant.

H. New Buildings Roof Height

In the CUP Submission packet pgs. 50-59, the applicant has provided preliminary roof height calculations and diagrams. These will be re-evaluated upon building plan set submission. The plans, as presented, are in compliance with the roof height requirements, stipulations, and design guidelines.

I. Environmental Considerations

There is a delineated wetland adjacent to the newly proposed on-site parking lot, located directly to the west of the Edelweiss and south of

Rio Hondo. The U.S. Corps of Engineers (US COE) identifies this wetland as SPA-2018-0010S -Taos Ski Valley Strawberry Hill Wetland Adjacent to the Rio Hondo.

If the wetland (or the Rio Hondo, or other water of the US) is impacted due to a discharge of fill or dredged material, a permit from the Corps of Engineers would likely be required under Section 404 of the Clean Water Act. If a permit is required, the Corps would require mitigation for impacts resulting in the loss of greater than 0.1 acres of wetland or the loss of 0.03 acres of streambed (temporary impacts generally do not require mitigation beyond restoration to preexisting conditions). If the project is not going to impact a water of the US, the Corps of Engineers is also able to review a project to confirm that no permit would be required.

APPLICANT'S RESPONSE: This "Environmental" condition of Staff is entirely unwarranted and a "poison pill" condition proposed to delay the Project. No "approval" letter from the Army Corp of Engineers is required or needed and is not part of a CUP in any respect. The ACE has already issued a Jurisdictional Letter (in May 2018) to Applicant TSVI based on TSVI's 2018 Wetland Delineation Report of Glorieta Geoscience, Inc. submitted to ACE in February 2018 regarding this area. (See attached Exhibit 3) Applicant's proposed overflow parking area (see Exhibit 3, pages 1 and 2) fully respects the Village's 15 foot buffer setback requirements in the Village ordinance. Staff only has authority to insure such setbacks are respected. No dredge or fill will be placed within the wetland area and therefore no Section 404 permit is needed from ACE who has a no jurisdiction if so. Applicant proposes no paving or any foundations on the overflow parking area. All site grading for overflow parking will have snow and silt fences installed during any site grading construction to protect the wetlands by Applicant.

4. Recommendation: Staff recommends a motion to **Approve** the Conditional Use Permit with the following **Conditions**:

1. The applicant shall submit revised Streetscape and Roadway Improvements to the satisfaction and approval of the Village Directors of Public Safety and Public Works, which addresses the pedestrian safety issue on Sutton Place.

Project costs, including design and construction, associated with realizing the Village approved Improvement Plans, shall be funded by TSVI, proportional to its increased traffic impact attributable to the Hotel St. Bernard redevelopment project. No deduction shall be granted for activities at the former HSB site. *All improvements shall be completed prior to issuance of a Certificate of Occupancy.*

APPLICANT'S RESPONSE: P&Z should reject this condition entirely as a condition of a CUP.

2. Due to the current lack of water supply capacity, *attributably to deficiencies in the delivery system*, to serve the proposed project, the developer, TSVI, proceeds at their own risk. After considering fire suppression requirements and existing water demand needs among other factors, the Village Public Works Director in consultation with Village staff, shall determine when to issue a Will-Serve Letter.

APPLICANT'S RESPONSE: P&Z should reject this condition entirely as a condition of a CUP.

3. All Development Impact Fees must be received by the Village of Taos Ski Valley prior to issuance of any project related Building Permit, *which includes a Foundation Permit*

APPLICANT'S RESPONSE: P&Z should reject this condition entirely as a condition of a CUP.

4. Submit lot line adjustment request or similar deed instrument prior to

Certificate of Compatibility approval.

APPLICANT'S RESPONSE: This is an Acceptable condition for a CUP.

5. Provide a written report which indicates the potential physical forces created upon the proposed improvements and structures. If the reports indicates that an avalanche hazard exists, then prepare a structural analysis of the proposed building or structure, sealed by a New Mexico licensed engineer, reflecting an engineering analysis and design which states that the design of the building or structure can withstand the potential force from an avalanche.

APPLICANT'S RESPONSE: P&Z should reject this condition entirely as a condition of a CUP.

6. Given the close proximity of the proposed on-site parking lot to a delineated wetland, provide a letter from the US Corps of Engineers affirming that either no Section 404 permit is required or a permit is required.

APPLICANT'S RESPONSE: P&Z should reject this condition entirely as a condition of a CUP.

7. The design and installation of the roof snow retention system shall be independently reviewed by a Village authorized professional, experienced and credentialed in such matters. The Village Building Official and other Staff members will participate in any recommendation to change the current roof configuration in consultation with TSVI. As permitted under Ord. 22-30, the developer shall pay all fees and associated expenses related to this matter.

APPLICANT'S RESPONSE: P&Z should reject this condition entirely as a condition of a CUP.

8. Any substantial changes to the application must be approved by the Planning and Zoning Commission; all other changes may be approved administratively by the Planning Officer.

APPLICANT'S RESPONSE: This is an acceptable condition for a CUP.

9. If no Building Permit is issued, the Conditional Use Permit will expire three (3) years from issuance.

APPLICANT'S RESPONSE: This is an acceptable condition for a CUP.

5. Public Notice & Public Comments

The notice of public hearing was mailed to all abutting property owners within 100 feet on November 17, 2022. A public notice sign was placed on the property on November 17, 2022.

A second notice of public hearing was mailed to all abutting property owners within 100 feet on January 18, 2023. A public notice sign was placed on the property on January 19, 2023.

The application materials and Staff Report were made available at the Villages Office for public review. The following written comments were received by the public:

A. None.

III. CONCLUSION / RECOMMENDED ACTION TO BE TAKEN BY PLANNING COMMISSION

Applicant respectfully requests that the Planning and Zoning Commission approve TSVI's Application for a Conditional Use Permit with only Staff

proposed Conditions #4, #8, and #9 thereto and REJECT Staff Conditions #1, #2, #3, #5, #6, and #7.

SUBMITTED BY:

CANEPA & VIDAL, P.A.

By: 

Joseph F. Canepa
Attorney for Applicant
Taos Ski Valley, Inc.
P.O. Box 8980
Santa Fe, NM 87504-8980
(505) 982-9229
jfcanepa@newmexico.com

1 Feb 23

APPROVED FOR FILING IN THE PUBLIC
RECORD

TAOS SKI VALLEY, INC.

By: Electronically Signed 2/1/2023
Peter J. Talty
Its Vice President

Hotel St. Bernard – Conditional Use Permit

Communication with VTSV Staff Timeline

1. August 1, 2022 CUP for the HSB is submitted to VTSV (Patrick Nicholson) Kris DeVogelaere delivered to the village with application payment
2. August 3, 2022 VTSV – Patrick Nicholson (PN) acknowledges receipt of HSB application.
3. August 12, 2022 HH Provided VTSV (PN) the Existing HSB plumbing existing condition plans and counts & requested a Walk through to confirm
4. August 12, 2022 HH Response VTSV (PN) regarding additional information, Avalanche Hazard Letter
5. August 16, 2022 VTSV (PN) responds that the existing HSB does not play a role in future infrastructure utility connections
6. August 16, 2022 VTSV (PN) request and then responds that they found the building area in the CUP application
7. August 18, 2022 HH Requested that VTSV (Jalmar) walk the existing HSB on 8/23 at 4:00 MT to walk to review Demolition plans and Existing Plumbing
8. August 18, 2022 VTSV (PN) Request indicating he is sending Development Impact Fee Assessment and applying for COC for the HSB
9. August 18, 2022 VTSV (PN) requests employee counts and building areas as they "help drive the DIF"
10. August 18, 2022 Response to VTSV that COC application is Minimum (4) months out
11. August 22, 2022 HH responded to VTSV (PN) that we are not tasked with assigning employee counts to the HSB and that the parking strategy was laid out in the CUP
12. August 23, 2022 HH & VTSV (JB) meet at HSB to review Demo. JB accepts the existing HSB plans for VTSV while on site
13. August 25, 2022 VTSV (PN) Request for Parking Counts, Employee Counts, Employee Parking and Improvement so Sutton Gondola Crossing
14. August 31, 2022 HH response for the Parking Requirements, Employee counts and improvements to Sutton Gondola Plaza request
15. September 6, 2022 HH Requested VTSV (PN) confirmation that the P&Z meeting of October 3rd requirements would be fulfilled (Mailer and Signage)

16. September 6, 2022 VTSV (PN) indicating DESIGN REVIEW TEAM (DRT) review is forthcoming and that the P&Z Commission review date of 10/3 would be pushed to 11/7
17. September 7, 2022 HH – Carl Pearson (CP) received voice mail from VTSV (PN) eluding to parking counts, locations and staff parking counts, and potential property agreements on the VTSV forestry permit
18. September 8, 2022 HH Receives VTSV DRT review from (PN)
19. September 19, 2022 HH Responds to VTSV DRT comments on HSB CUP submission
20. September 23, 2022 HH Reaches out to VTSV (PN) indicating (CP) will be in town and seeing if VTSV would like to meet
21. September 23, 2022 VTSV (PN) indicates that a meeting on 10/4 would work to meet with the DRT committee
22. October 4, 2022 HH and TSVI meet with VTSV/DRT Anthony Martinez (AM), John Avila (JA), and other VTSV staff for two and half hours at Lake Fork Room to review HH response to DRT comments
23. October 12, 2022 HH request from VTSV (PN) if that had any follow up from DRT meeting
24. October 17, 2022 HH response to DRT meeting regarding, Water Consumption, Roadway Improvements & Fire Department Request
25. October 18, 2022 VTSV (PN) confirms that the response to the DRT meeting revisions have been received by VTSV. Additionally, VTSV (PN) indicates that the CUP application cannot be reviewed at the P&Z Commission hearing on 11/17 as VTSV does not have a Village Attorney. Potential meeting to be pushed to December or New Year.
26. October 19, 2022 VTSV (PN) Requests "Prior to CUP hearing, it would be helpful to address the pedestrian safety concerns noted at our recent DRT mtg. in greater detail. Village staff have identified at least two possible solutions to mutually explore and consider"
27. October 21, 2022 HH (CP) proposed 11/3 as a meeting date for the Sutton Crossing discussion
28. October 27, 2022 HH reached back out to confirm the 11/3 meeting date as no response was received on original proposed date from VTSV (PN)
29. October 31, 2022 VTSV (PN) Confirmed Thursday 11/3 at 2:00 pm MT would work for the Sutton Place Gondola Crossing discussion. Also noted 'staff & engineers had not completed response to water demand/supply calculations.'
30. October 31, 2022 HH Sent an invite to VTSV (PN, AM, JA) re a meeting on the Sutton Place Crossing per (PN) request

31. October 31, 2022 HH requested to VTSV (PN) as status on the review of the Water Consumption Report provided on 10/17/22
32. October 31, 2022 VTSV (PN) Responding to HH question re any questions related to the Water Consumption response provided on 10/17/22 Indicated he is "still awaiting the review/analysis by the Public Works Dept. Once received, I'll be able to provide better direction. One significant additional stumbling block is the lack of a Village Attorney presently. I have no knowledge as to when this will be resolved."
33. November 3, 2022 PN canceled follow up Sutton Crossing Meeting due to "Debilitating Vertigo" Also mentioned lack of Village Attorney as impediment to CUP Public Hearing
34. November 3, 2022 TSVI – Peter Talty – issued Notice of Appeal requesting VTSV P&Z Commission to hear CUP application on December 5, 2022 Agenda.
35. November 15th, 2022 VTSV (PN) reached out to HH to inform the following: "The Public Hearing for the Conditional Use Permit for the Hotel St. Bernard is scheduled for Monday, December 5, at 1pm. Village staff will prepare and mail the required notice to nearby neighbors and property owners. The applicant is required to post on site a notice board at a prominent location which is most visible to the public. Two boards will be ready for pick-up tomorrow, Wednesday. They are required to be posted on site no later than Friday, November 18, 2022.

...an additional note. The sign fee is \$100. Application attached - Public Notice Signs.

36. November 16, 2022 VTSV (PN) Followed up to HH requesting that the public notice signage be picked up from the VTSV offices, paid for and posted on site by 5pm Friday November 8th
37. November 16, 2022 HH Responded to VTSV (PN) Confirming signage cost. TSVI Sent over a representative to provide VTSV the signage application and payment and picked up the (2) Public Notice Signs
38. November 17, 2022 HH Informed VTSV (PN, TW, JA) that the Public Hearing signage was posted on site and provided (2) photos if signage installed. HH requested that the Applicant receive staff comments attributed to the HSB CUP application by 11/30 so they could prepare for the 12/5 P&Z meeting
39. November 17, 2022 VTSV (PN) Confirmed all Signs are installed and located Correctly for the Public Notice. Further Patrick indicated that he could not commit to providing the staff report by 11/30 and would provide no later than 12/2 at noon MT
40. November 21, 2022 HH Provided VTSV (PN) an additional letter regarding HSB Avalanche post season conditions
41. November 22, 2022 VTSV (PN) Requested Signed Copy of Amended Avalanche Letter

42. November 29, 2022 VTSV (PN) left HH (CP) a voice mail wanting to discuss the parcel line adjustment for the HSB project
43. November 29, 2022 HH (CP) Returned VTSV (PN) Voice mail and discussed the parcel line question w/ VTSV (PN). PN indicated that he resolved the question internally and will apply the same language as previous projects requiring the parcel line modification to be in process at time of COC application. HH (CP) followed up the conversation with an email bullet pointing the discussion items.
44. December 1, 2022 VTSV (PN) Provided the Staff Report to HH (CP) and TSVI (PT). The report indicated several conditions that were not previously discussed as well as items discussed and discussed and thought to be resolved.
45. December 2, 2022 TSVI requested that the P&Z meeting for the HSB CUP application be postponed so that TSVI & HH can properly respond to the Staff Report and Conditions of Approval.
46. December 5, 2022 VTSV (PN) sent an email to HH (CP) confirming that TSVI had requested postponement of the 12/5 P&Z meeting agenda item for the CUP of the HSB. PN indicated that the CUP would be postponed to the 2/6 P&Z meeting at 1:00 MT. PN, indicated that he and staff are available if we need clarification on the staff report. PN indicated that all communication should be routed through him and no contact should be made with P&Z members directly
47. December 5, 2022 HH (CP) Responded to VTSV (PN) for clarification on the conditions of approval by email.
48. December 6, 2022 VTSV (PN) Responded to the 12/5 email from HH (CP) on clarifications to the conditions paced on the CUP application by the Staff report.
49. December 8, 2022 VTSV (PN) reached out to HH (CP) asking if it was necessary to meet the following week to go over the conditions and offered a Zoom meeting
50. December 8, 2022 HH (CP) responded to VTSV (PN) meeting request offering Monday or Wednesday the following week.
51. December 8, 2022 VTSV (PN) Confirmed a Zoom meeting on Wednesday 12/15 at 11:00 am MT
52. December 14, 2022 TSVI (CR), HH (CP) & VTSV (PN JA) participate in a Zoom meeting set up by PN to discuss and clarify the Staff recommended conditions indicated in the CUP application Staff Report issued by VTSV
53. December 16, 2022 – TSVI forwards meeting minutes of 12/14 meeting, clarifies TSVI position and requests confirmation from VTSV (PN) as to the meeting minutes and removal of items for Staff Conditions.

54. December 22, 2022 — VTSV (PN) set an email to HH/TSVI (CP) (CR) requesting any material changes by January 20, at 4 pm MT and indicating the signage would be ready January 19 for pick up.
55. December 22, 2022 — TSVI (CR) sent an email to VTSV (PN) (JA) (TW) requesting materials in advance of January 20 requesting receipt of the Staff Report being presented to the P&Z (2) weeks in advance of the February meeting.
56. January 3, 2023 — TSVI (CR) sent an email to VTSV (PN) regarding clarification of the VTSV (PN) statement that the meeting summary from the 12/14 meeting provided by (CR) was not accurate or complete. (CR) requested comments on the meeting summary so that the discussion could be accurately recorded. (CR) indicated that the documents regarding avalanche and lot line adjustment are in progress and will be provided when completed. (CR) indicated that TSVI made justifications for the conditions applied to Sutton Place Crossing, Watter and DIF should be removed from the Staff Report. (CR) indicated that the CV for the Snow Roof Consultant would be shared with the Staff.
57. January 3, 2023 — VTSV (PN) in response to an email on 12/22 from TSVI (CR) stating that the discussion summary from the meeting was "neither fully accurate nor complete" and indicating that he is awaiting any material changes or additional information on the pending CUP request. Once received he will update the Village Staff report as necessary. PN requested any additional information by Friday January 20th.
58. January 4, 2023 — VTSV (PN) Responded to TSVI (CR) meeting summary and stated "Without material changes to your Conditional Use Permit application, all previous Conditions of Approval remain in effect. If you wish Village staff to consider revising any Conditions, please submit revised plans or other material information no later than Friday, January 20". Additionally VTSV indicated that the public notice signage would be available on Thursday January 19th for posting on Friday January 20th before 5:00 pm.
59. January 5, 2023 — BSC Submitted a Grading Permit Application and documents to VTSV for review.
60. January 9, 2023 — VTSV Response to BSC Application for grading permit submitted on Friday January 6th. VTSV Response (PN) "Thanks you for the application and site plan. However, before issuance of an Excavation and Grading Permit, a Conditional Use Permit (CUP) must be granted by the Village Planning Commission, all Development Impact Fees (DIF) must be paid in full, and a Certificate of Compatibility granted by the Village Planning Dept".
61. January 9, 2023 — VTSV (CR) responded to VTSV (PN) email from ¼ indicating disappointment VTSV did not see any of the discussion points from our 12/14 meeting worthy of removing any of the conditions of the report. Additionally (CR) was asking for clarity on the (PN) statement that the meeting notes were not complete or accurate.
62. January 17, 2023 — HH (CP) Reached out to VTSV (PN) regarding the status of the Public Notice Signage application and fees



Planning & Zoning Commission

Thomas P. Wittman, Chair
Henry Caldwell
Richard Duffy
Yvette Klinkmann
Susan Nichols
J. Christopher Stagg
Jim Woodard

Staff Report

Conditional Use Permit: Commercial Restaurant 1 Thunderbird Road

1. Case Summary

Date of Hearing: September 13, 2021
Application Received: August 10, 2021
Date of Posting: August 26, 2021
Plan Review Fees: \$750 - Conditional Use Permit (Minor)

Project Description: The applicant is requesting a Conditional Use Permit (CUP) to establish a commercial restaurant on an existing commercial use property. Currently, besides a B&B lodging facility, the applicant operates a small food truck/satellite kitchen under an expiring temporary administrative permit. The owner seeks to expand the business into a full-service restaurant with indoor seating.

The applicant has provided a site plan and brief description of the proposed expanded use layout, which is included as Exhibits A-B.

Prior Actions/Approvals: None

2. Zoning Analysis:

A. The subject property is located at 1 Thunderbird Road and is within the Core Village Zone (CVZ). The purpose of this zoning is to recognize the unique importance and characteristics of properties near and adjacent to the base Village of Taos Ski Valley and to provide for:

1. The enhancement of the character of the CVZ area through best practice town-center design and planning principles.

2. The promotion of uses which attract/serve both tourists and the local community.
3. The encouragement of high quality and sustainable development.
4. The promotion of more intense, compact and integrated development.
5. The timely and orderly development of the CVZ's proposed system of roads, utilities, drainage, and trails/paths.
6. Parking flexibility so that all parking does not have to be provided on site.
7. The encouragement of pedestrian walkways and vehicle-free areas.
8. Path/trail connectivity to the proposed river walk and nearby trails and open space.
9. A flexible approach, through the use of performance standards, to implement the goals of the Village of Taos Ski Valley's plan.
10. The preservation and enhancement of the unique visual characteristics of the Village of Taos Ski Valley.

The proposed development, where applicable, meets the intentions of the above.

- B. The Planning and Zoning Ordinance instructs the Commission in Section 26 - Conditional Use Permit, subsection 4: to follow the guidelines below when evaluating and permitting a CUP request:**

The Commission shall not approve any Conditional Use Permit unless satisfactory provision has been made concerning the following, where applicable:

1. Access to property and proposed structures thereon, with particular reference to automobile and pedestrian safety, traffic control, and emergency access in case of fire, flood, avalanche or catastrophe.
2. The economic, noise, glare, or odor effects of the Conditional Use on adjoining properties.
3. General compatibility with adjacent properties and other properties in the Village with regard to height, landscaping, setbacks, lighting, signs, parking, and design standards when adopted by the Village Council.
4. Compliance with supplementary regulations as delineated in zone in which the property will be located.
5. All improvements required by the Village Planning Department and/or Village Engineer in the Public Works Plan have been completed or completion plans, designs and costs are approved by an agreement approved by the Village Council.

The applicant has replied in their submittal packet and generally complies with the intentions of all the above CUP guidelines.

3. Recommendation: Staff recommends a motion to **Approve** the Variance.

4. Public Notice & Public Comments

The notice of public hearing was mailed to all abutting property owners within 100 feet on August 27, 2021. A public notice sign was placed on the property on August 26, 2021.

The application and Staff Report were made available at the Villages Office for public review. The following written comments were received by the public:

A. None.

5. Staff Endorsements

Submitted By:

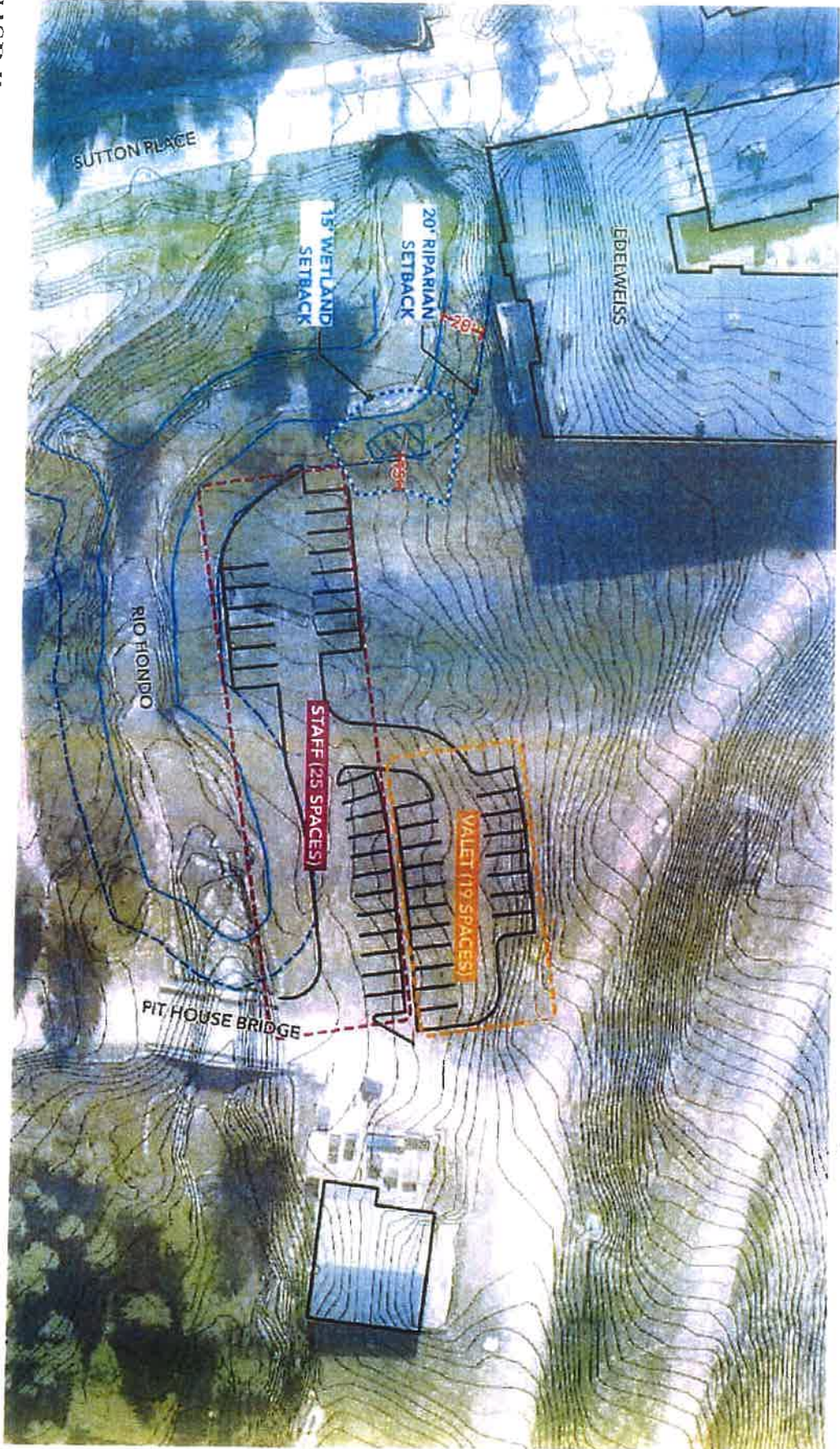
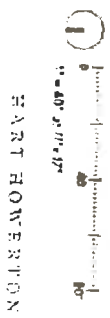
Patrick Nicholson
Director, Planning & Community Development Department

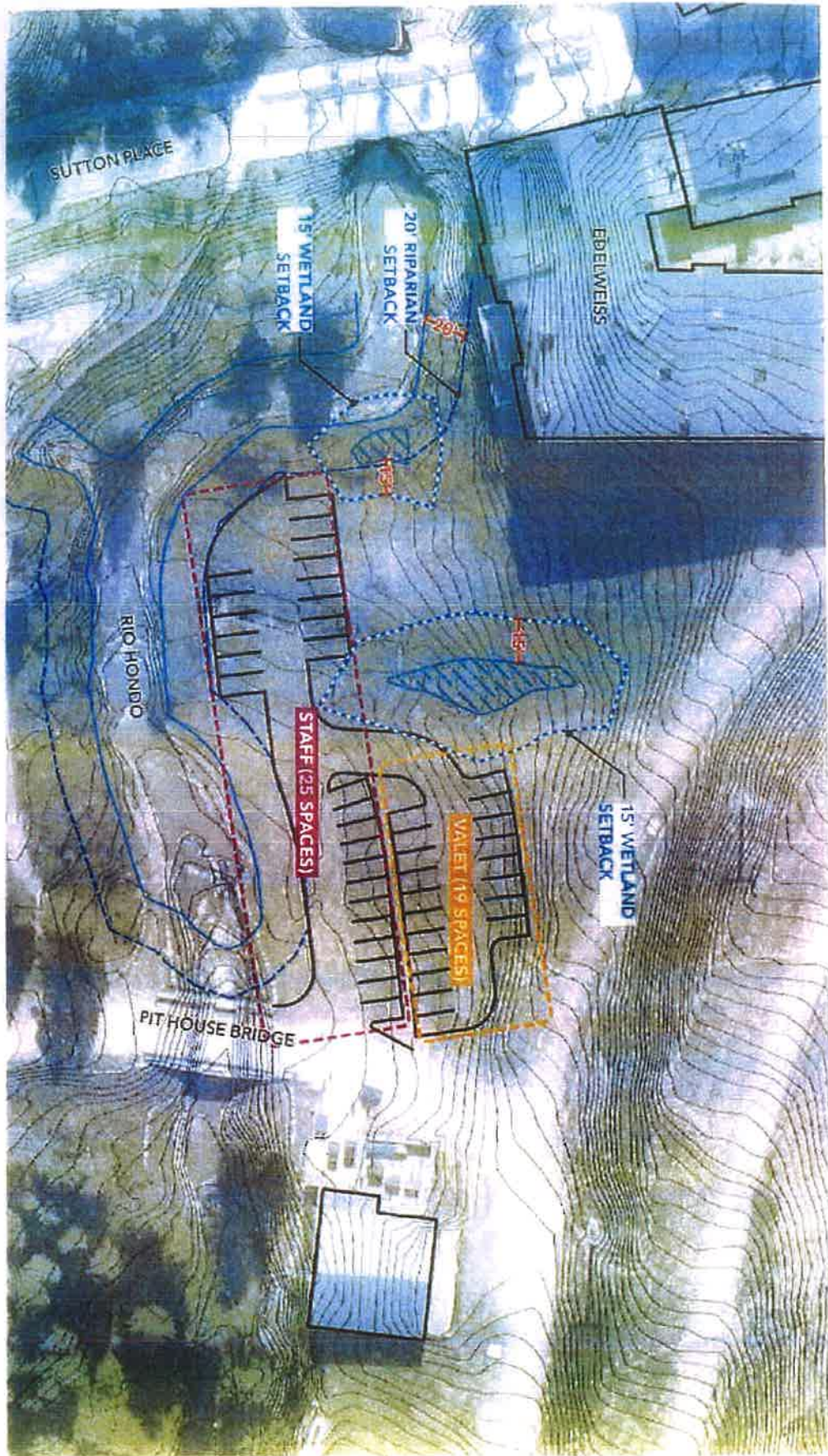
6. Attachments

- A. Site Plan
- B. Project description
- C. CUP guidelines response
- D. NMED Food Permit

HSB Remote Parking Location

Note: 1' Contours Shown





HSB Remote Parking Location

Note: 1' Contours Shown

HART HOWENTON



Page 2



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109

May 31, 2018

Regulatory Division

SUBJECT: Jurisdictional Determination – Action No. SPA-2018-00105-ABQ, Taos Ski Valley
Strawberry Hill Wetland Adjacent to the Rio Hondo

Paul Drakos
Glorieta Geoscience, Inc
PO Box 5727
Santa Fe, NM 87502

Dear Mr. Drakos:

This letter responds to your request for a jurisdictional determination (JD) for property located at latitude 36.59570, longitude -105.451278, in Taos County, New Mexico. We have assigned Action No. SPA-2018-00105-ABQ to your request. Please reference this number in all future correspondence concerning the site.

Based on the information provided, we have determined that the site may contain waters of the United States that are subject to regulation under Section 404 of the Clean Water Act. The 0.027-acre Strawberry Hill wetland referenced in the Glorieta Geoscience, Inc. February 2018 report appears to be waters of the United States located within the subject property. If you intend to conduct work that could result in a discharge of dredged or fill material into waters of the United States, please contact this office for a determination of Department of the Army permit requirements and refer to Action No. SPA-2018-00105-ABQ.

This preliminary JD is advisory in nature and may not be appealed. An approved JD is an official Corps determination that "waters of the U.S." and/or "navigable waters of the U.S." are either present or absent on a particular site. An approved JD precisely identifies the limits of those waters on the project site determined to be jurisdictional under the Clean Water Act or Rivers and Harbors Act. If you wish, you may request that the USACE reevaluate this case and issue an approved JD, which may require coordination with the Environmental Protection Agency. If you request an approved JD, you may not begin work until the approved JD is completed. Please contact me if you wish to request an approved JD for this case.

If you have any questions, please contact me at (505) 342-3280 or by e-mail at Deanna.L.Cummings@usace.army.mil. At your convenience, please complete a Customer Service Survey on-line available at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0.

Sincerely,

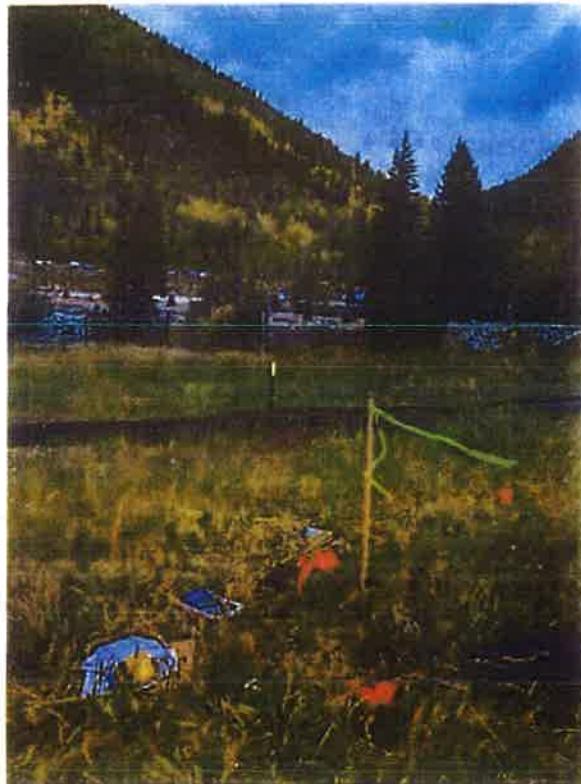
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6005202

Deanna L. Cummings
Senior Regulatory Project Manager

Digitally signed by CUMMINGS DEANNA.L.1246005202
DN: c=US, ou=U.S. Government, ou=DoD, ou=PAE,
ou=USA, cn=CUMMINGS.DEANNA.L.1246005202
Date: 2018.05.31 17:05:54 -0600

APT-15.31

TAOS SKI VALLEY, INC.
TRACT 3 (PARCEL I)/STRAWBERRY HILL WETLAND DELINEATION
VILLAGE OF TAOS SKI VALLEY, TAOS COUNTY, NEW MEXICO



Prepared for: Taos Ski Valley, Inc.

Prepared by: Paul Drakos
Dane Goble
James Bearzi
Glorieta Geoscience, Inc.
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505.983.5446



February 2018

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**TAOS SKI VALLEY, INC. TRACT 3 (PARCEL I)/STRAWBERRY HILL WETLAND DELINEATION
VILLAGE OF TAOS SKI VALLEY, TAOS COUNTY, NEW MEXICO**

Introduction

Glorieta Geoscience, Inc. ("GGI") has conducted a wetland delineation ("Delineation") for Taos Ski Valley, Inc. ("TSV") south of the Rio Hondo, west of Edelweiss Lodge and Spa ("the Edelweiss"), and east of a former ski lift (Lift 3) location within the Village of Taos Ski Valley, Taos County, New Mexico (Figures 1 and 2). The Delineation was performed as part of TSV's assessment of site conditions that may affect or be affected by potential development south of the Rio Hondo and west of the Edelweiss. Wetlands in the vicinity of the potential development had previously been delineated south of the Rio Hondo and north of the Edelweiss (GGI, 2015; *Stream Restoration and Wetland Delineation*), north of the Rio Hondo (USFS, 2012), north of the Lake Fork (GGI, 2012; *Core Village Development Wetland Delineation*), and north of the North Fork (GGI, 2016; *Wetland Delineation and Condition Assessment North Fork of the Rio Hondo near Thunderbird Road*). The *Core Village* wetland was subject to dredging and filling under USACE Permit SPA-2012-00316-ABQ (GGI, 2013) and is therefore no longer included as a delineated wetland.

This Delineation was conducted in conformance with the technical guidelines and methods described in the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region* (2010). The Delineation is based on results of field studies of vegetation, hydrology, and soils. The Delineation was conducted by Paul Drakos (soils and hydrology), Dane Goble (vegetation), and James Bearzi (soils and hydrology) of GGI. Fieldwork was conducted on September 22 and October 6, 2017.

Results of the site investigation and Delineation show that, of the total area investigated, a 0.027 acre emergent palustrine wetland is located south of the Rio Hondo and west of the Edelweiss Lodge (Edelweiss) (Figures 2 and 3).

Figure 1. Site Location Map, Taos Ski Valley Tract 3 (Parcel I) Strawberry Hill Wetland Investigation

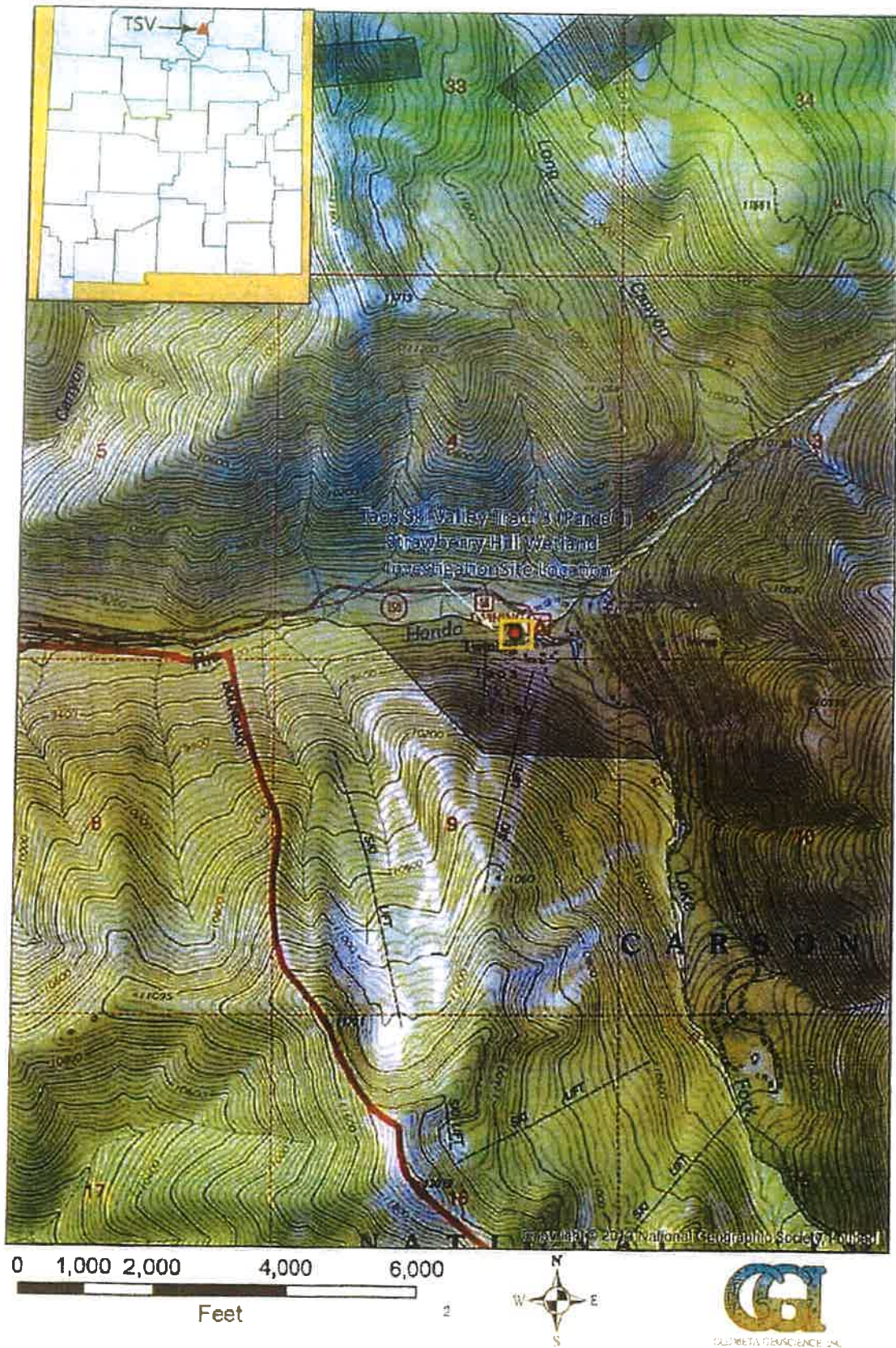
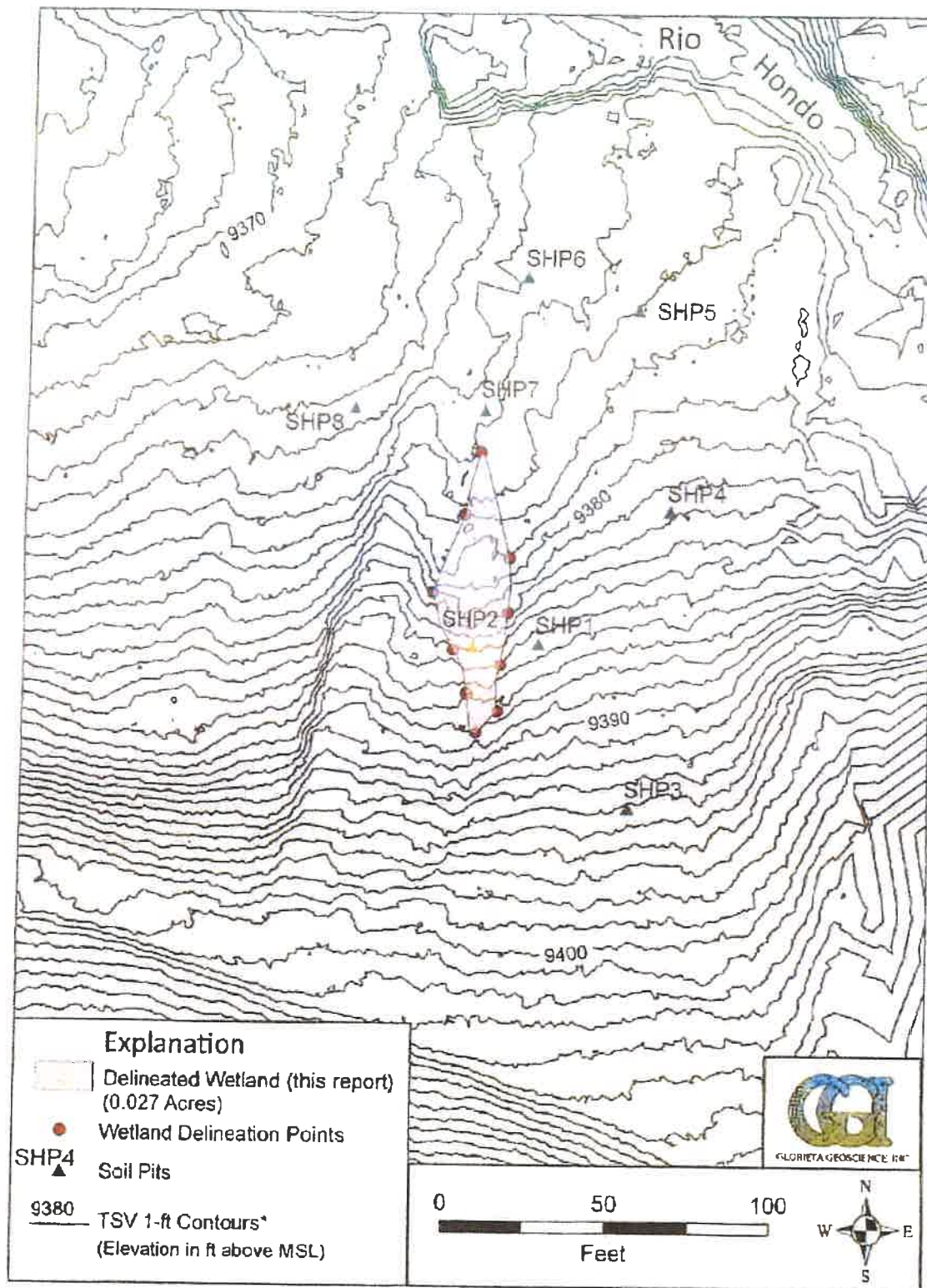


Figure 2. Taos Ski Valley, Inc. Tract 3 (Parcel I), Strawberry Hill Wetland Delineation and Soil Pits Overlain on Aerial Imagery



Figure 3. Strawberry Hill Wetland Delineation and Soil Pits Overlain on 1-ft Contour Interval Topography



*Elevation Contour Lines generated from LIDAR data

Site Description

The site is located on the United States Geological Survey (USGS) *Wheeler Peak, N. Mex.* 7.5' quadrangle map, in an unplatted portion of the Antoine Leroux Grant. The legal description is SE¼, projected sec. 4, T.27N, R.14E (Figure 1). The study site includes the lower slopes of a steep, north-facing valley slope and fluvial terrace adjacent to the Rio Hondo, at an elevation of approximately 9,380 feet. The Site is part of a 15.031 acre Parcel referred to as Tract 3 (also sometimes known as Parcel 1) in the Land Division Survey for TSV performed by Red Tail Surveying. The Rio Hondo is a perennial stream that is approximately 20 to 25 ft wide in the site vicinity.

A site reconnaissance was conducted for the area on the south side of the Rio Hondo, east of the former ski lift and west of the Edelweiss (Figure 2). The area south of the Rio Hondo, from the former boxcar frame crossing to the small wetland near the Edelweiss site is a thin riparian strip approximately 5 to 15 feet wide with rocky, non-hydric soils and a channel generally incised 5 feet or more.

Geomorphic Setting

The Site is situated in the valley of the Rio Hondo drainage in the Village of Taos Ski Valley. The valley was glaciated during the Pleistocene Pinedale and Bull Lake glacial periods. Williams Lake, located approximately two miles south of the site, is situated in a cirque between Lake Fork, Sin Nombre, and Wheeler Peaks. The study site includes the lowermost north-facing colluvial/talus slopes of the Rio Hondo valley and the narrow alluvial valley floor. A seep discharges from the colluvial slope west of the Edelweiss and is the water source for a nearby wetland north of the Edelweiss Lodge and Spa, but not the wetland area evaluated for this investigation.

Methods

The Site classification and wetland delineation are based on results of vegetation, hydrology, and soil studies performed in conformance with the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains*,

Valleys, and Coast Region (2010). The delineation procedures prescribed by the manual give consideration to three environmental parameters: (1) vegetation, (2) soils, and (3) hydrology. The presence of wetland characteristics or indicators of all three parameters is indicative of the presence of wetlands. These indicators are: (1) presence of hydrophytic vegetation, (2) the presence of hydric soils, and (3) the presence of wetlands hydrology.

Vegetation

The spatial extent of existing hydrophytic vegetation is determined as outlined in the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0)* (2010) by: (1) examining the vegetation in a subject plant community, (2) identifying the plant species in that community, and (3) recording the indicator status for each species. Hydrophytic vegetation is present if greater than 50% of the dominant species have an indicator status of obligate (OBL), facultative-wet (FACW), and/or facultative (FAC) (Table 1). Due to high species diversity with the majority of species having low cover values, only dominant species were recorded.

A site visit was conducted by GGI staff to identify wetland plant species in the study area on September 22, 2017. Vegetation was assessed at a radius of ~0.6 meters (m) measured from each soil pit site (SHP1 to SHP8), with a total circular surveyed area of ~1.1 m² for the herbaceous species. Each dominant plant species was noted, and summarized in the *Results* section of this report. The presence and abundance of wetland indicator species (OBL, FACW, and FAC) was determined for each of the soil pit locations. Each species was assigned a Western Valleys Mountains and Coast Region wetland indicator status based on the USDA Natural Resource Conservation Service online *Plants Database* (USDA, 2017).

Table 1. Explanation of wetland indicator status codes.

Indicator Code	Indicator Status	Comment
OBL	Obligate wetland	Almost always occurs in wetlands.
FACW	Facultative wetland	Usually occurs in wetlands, but may occur in non-wetlands.
FAC	Facultative	Occurs in wetlands and non-wetlands.
FACU	Facultative upland	Usually occurs in non-wetlands, but may occur in wetlands.
UPL	Obligate upland	Almost never occurs in wetlands.
NI	No indicator	Insufficient information available to determine indicator status.

Soils

Prior to field examination of Site soils, GGI reviewed published soils maps of the area. The *Soil Survey of Taos County* (USDA, 1982) and the *Web Soil Survey* (USDA, 2017): <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm> indicates that soils present in the valley bottom along the Rio Hondo fall within the Cryoboroll map unit (Appendix C). The Cryoboroll map unit includes 10-15% Cryaquolls, which indicate an aquic soil regime. An aquic soil regime is a hydric soil, a wetland indicator.

Soils field data were collected from eight pits hand dug using a shovel. The soil pits were approximately 1 foot in diameter and, due to rocky substrate, 10-17 inches deep.

GGI examined soil horizons for thickness and master and subordinate horizon classification. Soil characteristics such as: (1) moist soil color, (2) texture, (3) presence of mottles or H₂S odor, if any, (4) structure, and (5) percent gravel were identified and recorded. Colors were identified using Munsell soil color charts. Soils were described using the methods of Birkeland (1999) and USACE (2010). Any hydric soil indicators, such as the presence of histosols (organic soils), histic epipedons, sulfidic material or odor, aquic or peraquic moisture regimes, reducing soil conditions, gleyed (gray) or low-chroma colors, bright mottles and/or low matrix chroma, and iron and/or manganese

concretions, were noted and recorded. Areas with any one of the hydric soil indicators listed above were classified as having wetlands soils.

Hydrology

Surface Water Hydrology

The primary surface water feature in the area is the Rio Hondo, a perennial stream to the north of the Site. The Site was examined for indicators of other surface water flows. Specific surface water wetland indicators include: surface inundation, watermarks, drift lines, sediment deposits, drainage patterns, algal mats or crust, aquatic invertebrates and water-stained leaves. A small stream, less than 3 in. deep, originates from a seep west of the Edelweiss and flows to the east of the Site, through a previously-delineated wetland north of the Edelweiss, and thence into the Rio Hondo (Figure 2).

Groundwater Hydrology

Subsurface hydrology data were collected from the three soil pits described in the *Soils* section above. Depth to water, if present, was recorded on September 22 and October 6, 2017. Wetland subsurface hydrology indicators, such as soil saturation, were recorded. A depth to water of 12 inches or less during the growing season clearly indicates wetland hydrology, which was the case in all three of the pits within the delineated area. All areas with surface inundation, evidence of past inundation, depths to water of 12 inches or less (during the growing season), or saturated soils at a depth of 12 inches or less, were classified as having wetland hydrology.

Results

Vegetation

The site is in a generally open area with some *Salix planifolia* and *Salix drummondiana* shrubs. The dominant species identified at each soil pit are described below and photos of the plots are presented in Appendix A.

SHP1: This vegetation community contained no tree or sapling/shrub stratum and is dominated by *Equisetum arvense*, *Calamagrostis canadensis*, and *Symphyotrichum lanceolatum* in the understory. Overall vegetation cover was 100%. The vegetation community indicates wetland conditions, since all dominant species are wetland indicators.

SHP2: *Salix planifolia* was the only specie in the sapling/shrub stratum in this plot. The herbaceous layer is dominated by *Scirpus microcarpus* and *Calamagrostis canadensis*. Overall vegetation cover was 100%. The vegetation community indicates wetland conditions, since all dominant species are wetland indicators

SHP3: *Salix drummondiana* was the only species in the shrub layer in this plot. The herbaceous layer was dominated by *Carex microptera*. Total vegetation cover was 100%. Overall, the vegetation community indicates wetland conditions.

SHP4: This vegetation community contained no tree or sapling/shrub stratum and is dominated by *Carex nebrascensis*, *Phalaris arundinacea*, and *Eleocharis quinqueflora* in the understory. Total vegetation cover was 90%. Overall, the vegetation community indicates wetland conditions.

SHP5: This vegetation community contained no tree or sapling/shrub stratum and is dominated by *Epilobium ciliatum*, *Phalaris arundinacea*, and *Eleocharis quinqueflora* in the understory. Total vegetation cover was 100%. Overall, the vegetation community indicates wetland conditions.

SHP6: This vegetation community contained no tree or sapling/shrub stratum and is dominated by *Fetusca saximontana* and *Taraxacum officinale* in the understory. Total vegetation cover was 75%. Overall, the vegetation community does not indicate wetland conditions.

SHP7: This vegetation community contained no tree or sapling/shrub stratum and is dominated by *Cirsium arvense* and *Carex aquatilis* in the understory. Total vegetation cover was 95%. Overall, the vegetation community indicates wetland conditions.

SHP8: This vegetation community contained no tree or sapling/shrub stratum and is dominated by *Agrostis gigantea* and *Phleum pratense* in the understory. Total vegetation cover was 85%. Overall, the vegetation community does not indicate wetland conditions.

Hydrology

Depth to water (DTW) was less than 12 inches in all pits except SHP-6, SHP-7, and SHP-8. In SHP-7 the soil remained unsaturated to the total depth of 17 inches. Soils were very rocky and limited determination of the water table in soil pits SHP-6 and SHP-8; neither had saturated soils at refusal depth of 7 and 4 inches, respectively. All pits with a DTW of 12 inches or less (Indicator A2) or saturated soils within 12 inches (Indicator A3) during the growing season indicate high water table wetland hydrology conditions.

The Rio Hondo is a perennial stream north of the site boundary. The ordinary high water mark (OHWM) for the Rio Hondo was determined to be a channel that is approximately 20 ft wide in the site vicinity. Recent stream restoration activities in 2017 have modified the stream geometry since this investigation. A small stream, less than 3 in. deep, originates from seeps southeast of the site and flows through a previously-delineated wetland north of the Edelweiss, and thence into the Rio Hondo. No other surface waters were observed in the study area.

Soils

A description of the soils examined at each of the pit sites is provided on the wetland delineation forms in Appendix B. Soil photographs are provided in Appendix A. Soils are thin and rocky, and meet wetland soil criteria in one pit only due to a depleted layer below a dark surface horizon (Indicator A11) and a sandy gleyed matrix (Indicator S4). Soil profiles are summarized as follows:

SHP-1: 2-inch O horizon with decayed organic matter present atop a >10-inch Bw horizon. No hydric soils present.

SHP-2: 6-inch O horizon atop a >6-inch gleyed sandy B horizon. Hydric soils present.

SHP-3: 3-inch O horizon atop a >9-inch A horizon. No hydric soils present.

SHP-4: 4-inch sandy O horizon with approx. 1 inch of surface muck. >6-inch gravelly C horizon. No B horizon. No hydric soils present.

SHP-5: 6-inch O horizon; top 3 inches muck. >9-inch cobbly C horizon. No B horizon or hydric soils present.

SHP-6: 3-inch A horizon atop a >4-inch Bw horizon. No hydric soils present. Young soil in disturbed alluvial deposit.

SHP-7: 9-inch A horizon atop a >8-inch Bw horizon. No hydric soils present.

SHP-8: 4-inch AC gravelly horizon (refusal at 4 inches). No hydric soils present.

Wetland Delineation

In accordance with the ACE's guidelines, all areas on the property with all three wetland indicators (hydrophytic vegetation, hydric soils, and wetland hydrology) present were classified as wetlands (Table 2). Total area of the wetland as delineated by GGI is approximately 0.027 acres (Figures 2 and 3; area calculated in ArcGIS).

Table 2. Wetland Delineation, Taos Ski Valley Strawberry Hill Site

Soil Pit Number	Hydrophytic Vegetation?	Wetland Hydrology?	Hydric Soils?	Wetland Area?
1	Y	Y	N	No
2	Y	Y	Y	Yes
3	Y	Y	N	No
4	Y	Y	N	No
5	Y	Y	N	No
6	N	N	N	No
7	Y	N	N	No
8	N	N	N	No

References

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- USDA, 2014. <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>
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Glorieta Geoscience, Inc.

APPENDIX A

Soil Pit/Vegetation Plot Photos

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**APPLICANT / APPELLEE TAOS SKI VALLEY, INC.'S
REQUEST FOR EXPEDITED HEARING ON OR BEFORE
MARCH 21, 2023 ON THE APPEAL OF THE VILLAGE'S
PLANNING & ZONING COMMISSION'S FEBRUARY 6, 2023
DECISION GRANTING APPLICANT A CONDITIONAL USE PERMIT
FOR ITS HOTEL ST. BERNARD PROJECT**

COMES NOW, Taos Ski Valley, Inc., the Applicant (and the Appellee herein) for a Conditional Use Permit for its pending Hotel St. Bernard Project in the Village of Taos Ski Valley, New Mexico, by and through its attorney, Joseph F. Canepa, Canepa & Vidal, P.A., and hereby requests that the Village Council set their public hearing on the appeal of the Village's Planning

and Zoning Commission's decision of February 6, 2023, granting Applicant a Conditional Use Permit on Applicant's Hotel St. Bernard project at its earliest, lawful opportunity but no later than Tuesday, March 21, 2023 at a Special Council Meeting.

As grounds therefor, Applicant states that any delay beyond March 21, 2023, will necessarily cause the Applicant irreparable economic harm due to administrative delay in obtaining building permits for the construction of this Hotel St. Bernard Project beyond the short Taos Ski Valley 2023 construction season (April – October 2023).

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